Supreme Court, U.S.
FILED

97 864 NOV 24 1997

OFFICE OF THE CLERK

No. ____

In The

Supreme Court of the United States

October Term, 1997

AVAINE STRONG,

Petitioner,

v.

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

AVAINE STRONG, *Pro Se*
P. O. Box 26278
Washington, DC 20001
(202) 806-6261

*Some Supplemental Briefs are not enclosed.

QUESTIONS PRESENTED FOR REVIEW

1) Did the U. S. District Court for the District of South Carolina, Charleston, Division err when it dismissed the South Carolina Human Affairs Commission as a defendant?

2) Did the U. S. District Court err when it denied petitioner's claim of violation of due process?

3) Did the U. S. District Court err when it dismissed petitioner's claim of violation of Freedom of Speech?

4) Did the U. S. Appeals Court err when it denied request for the Grand Jury investigation into claims of corruption in state government and the court system; thus allowing hate crimes to go uncorrected?

5) Did SHAC violate Federal laws in reaching its decision of "no reasonable cause"?

6) Were petitioners provided equal protection under law during SHAC investigation?

7) Did District Court err when it allowed attorneys to remove the case from the State Court to the District Court?

8) Was Strong (a Black male) claims of sexual harassment considered in the same spirit as female claims of sexual harassment?

9) Was Pro Se litigant given equal treatment as lawyers?

10) Did the District Court err when it did not consider petitioner pretrial motions?

11) Was judgment fair in this case?

QUESTIONS PRESENTED FOR REVIEW – Continued

12) Did the U. S. District Court for the District of South Carolina, Charleston Division err when it failed to render a verdict pertaining to Denmark Technical College?

13) Did Appeals Court err when it denied petitioner's petition for Rehearing and suggestion for rehearing in banc?

14) Did trial court judge err when he chose not to intervene in settlement?

15) Did U. S. Appeals Court err by only providing opinion in those statements commented on by the appellees?

16) Did the U. S. District Court provide petitioner equal protection under law?

17) Did U. S. Appeals Court provide petitioner equal protection under law?

18) Did Trial Judge err by not allowing statements pertaining to race and religion in Voir Dire questions to jury?

19) Did Trial judge err by not instructing defendants to sit at defendants box during trial?

20) Did sequestration offer the defendants an unfair advantage and was sequestration compromised?

21) Were inappropriate statements made in presence of jury, thus, providing defendants an unfair advantage?

22) Did trial judge show partiality by allowing defendants hearsay evidence to be submitted at trial and not allowing much of Strong's evidence to be submitted, classifying it as hearsay?

QUESTIONS PRESENTED FOR REVIEW – Continued

23) Did trial judge err by not allowing a cassette in as evidence or records submitted to SHAC earlier?

24) Did District Court err by not including conspiracy or not allowing amendment of complaint?

25) Did Trial Judge err when he allowed the respondent to use a defense . . . the claim that petitioner pursued Keels and set her up in order to gain his position back as dean?

LIST OF PARTIES

AVAINE STRONG

Petitioner

vs.

STATE BOARD FOR TECHNICAL AND
COMPREHENSIVE EDUCATION
111 EXECUTIVE CENTER DRIVE
COLUMBIA, SC 29210-8424

Respondent

SOUTH CAROLINA HUMAN AFFAIRS COMMISSION
2611 FOREST DRIVE
SUITE 200
COLUMBIA, SC 29240

Respondent

DENMARK TECHNICAL COLLEGE
AREA COMMISSION
BLATT BLVD.
DENMARK, SC 29042

Respondent

DENMARK TECHNICAL COLLEGE
BLATT BLVD.
DENMARK, SC 29042

Respondent

FRANKIE KEELS
125 SILKWORTH PL
IRMO, SC 29063

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
LIST OF PARTIES	iv
TABLE OF AUTHORITIES	vii
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL ISSUE AND STATUTORY PROVISIONS	1
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	6
CONCLUSION	13
APPENDIX	A-1

APPENDIX

A.	Decision of appeal court/opinion(s)	A-1
B.	Excerpt Appellant's Brief	B-1
C.	Excerpt Motion to Compel	C-1
D.	Appellant's Memorandum In Response To Appellee's Response	D-1
E.	Letter from Albert Ulmer to Curtis Bryan	E-1
F.	Letter to Magistrate Carr (Heyward's Affidavit)	F-1
G.	Verdict of Trial	G-1
H.	Motion to strike	H-1
I.	Order court denies leave to proceed in forma pauperis	I-1

TABLE OF CONTENTS – Continued

Page

J. Motion for general relief asking for a Grand jury investigation.....J-1

K. Information in support of motion (Salley and Camp's Affidavit) K-1

L. Petition for Rehearing and Suggestion For Rehearing In Banc.....L-1

M. Order-petition for rehearing denied M-1

N. Pressing for summary judgment (excerpt).....N-1

O. Other affidavits O-1

TABLE OF AUTHORITIES

Page

CASES

Beaudett v. City of Hampton, 775 F. 2d 1274 (4th Cir. 1985) 11

Biehvenu v. Beauregard Parish Police Jury, 705 F. 2d 1457 (1983, CA 5 La)..... 11

Ellison v. Brady, 924 Fed. 872 (1991) 10

Meritor Sav. Bk. v. Vinson, 477 U.S. 57 (1986) 10

TXO Production Corp. v. Alliance Resources Corp., cite as 113 S. Ct. 2711 (1993)..... 4

OTHER AUTHORITIES

Amendments I, and XIV of the Constitution of the United States..... 2, 3, 11

EEOC: Policy Guidance on Sexual Harassment B-21

Title VII of the Civil Rights Act of 1964 ..... 2, 3, 6

Title IX of the Education Amendment..... 3

United States Constitution Article VI..... 1

PETITION FOR A WRIT OF CERTIORARI

Petitioner, respectfully prays for a writ of certiorari issue to review the judgment below and entered on November 2, 1995 and allowance of Appeal denied by the United States Court of Appeals For The Fourth Circuit and entered on July 21, 1997.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit appears in Appendix A (unpublished).

JURISDICTION

The date on which the United States Court of Appeals decided my case was July 21, 1997.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 26, 1997; Entry of Judgment, September 3, 1997. A copy of the order denying rehearing appears at Appendix M.

The jurisdiction of this court is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL ISSUE AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION, ARTICLE VI

Section 2: This Constitution, and the laws of the United States which shall be made in pursuance

thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

Section 3: Senators and representatives before legislatures, and all executive and judicial officers, both of the U.S. and of the several states, mentioned, and the members of the several States shall be bound by oath or affirmative action to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

The U.S. Constitution Amendment I

. . . . Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise therefore; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

United States Constitution Amendment XIV, Section 1:

" . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction, the equal protection of the laws.

Title VII of the Civil Rights Act 1964 . . . Outlaw discrimination in employment because of sex, race, color, religion, or national origin.

Title IX of the Education Amendments . . . illegal for Federally assisted educational program to discriminate on account of sex.

STATEMENT OF THE CASE

This case is about the respondents denying petitioner, a protected class, several of his constitutional rights and have continued to do so. Plaintiff, a former professor and administrator at Denmark Technical College (DTC), brought his action against the defendants on July 1, 1994. Prior to his being forced to resign, he was wrongfully demoted (in violation of state policy and without due process) from the position as Dean of Engineering and Industrial Related Technology Division. Plaintiff filed a charge of discrimination on April 15, 1993 with the South Carolina Human Affairs Commission (SHAC). The commission's "superficial investigation" found no reasonable cause to believe that he had been victim of unlawful discrimination. The plaintiff then sued for slander, violation of civil rights, sexual harassment (Title VII), defamation, intentional infliction of emotional distress or negligent infliction of emotional distress, unfair and deceptive business practices, and conspiracy. That is, a violation of the First Amendment as previewed through the Fourteenth Amendment as relating to Title 42 USC 1983, 1985, 1986, 1988, and Title VII of the Civil Rights Act.

Plaintiff demanded judgment for damages in the amount of $25,000,000 for actual and punitive damages and any other relief as the court deemed just and equitable. This amount is not considered "grossly excessive" as

to violate due process when the respondents have acted in bad faith. In fact, their scheme, you will find, was part of a larger pattern of fraud, trickery and deceit. *TXO Production Corp. v. Alliance Resources Corp.*, 113 S. Ct. 2711 (1993).

Plaintiff filed an action in State court and a similar case in the Charleston Division on July 1, 1994 (CA No.: 2:94-1823-18AJ). The attorneys for the defendants (not including, SHAC) removed the case from State court to District court and a motion to consolidate, on July 14, 1994. Plaintiff filed a motion to remand and motion opposing consolidation on July 29, 1994, [entered on 08/10/94] but was denied. Thus, both cases were consolidated on August 24, 1994. Also, as was expected, the attorneys motioned the court to dismiss SHAC, before discovery, citing that the eleventh amendment barred SHAC from being sued in Federal Courts.

These calculative tactics were used by these attorneys just to get SHAC dropped as one of the defendants. At the December 14, 1994 hearing, Judge Carr stated that he would consider a declaration judgment against SHAC if Plaintiff was willing to amend his complaint. Plaintiff felt it was better to keep SHAC as a defendant thus, he asked that a declaration judgment be considered against them. The Plaintiff has always contended that the dismissal was improper for two reasons: (1) these attorneys did not represent SHAC and (2) plaintiff filed in proper court to prevent SHAC from being dropped. March 2, 1995, Plaintiff filed a motion for summary judgment. In the meantime, the attorneys for the Defendants filed a motion for summary judgment on March 15, 1995. At the June 14, 1995 hearing on the motion for summary judgment,

plaintiff tabled his motion for a later date. The reason for this was that much information was being withheld through the SHAC files a violation of discovery. Motion to compel had previously been filed. Violations of discovery and motions to compel were filed (Appendix C). Therefore, the court entertained the Defendants' motion, whereby, the only surviving cause of action was the Title VII violation.

On July 18, 1995, Plaintiff filed a motion for relief from judgment or order as it pertains to conspiracy and to restore the count of conspiracy held against all the defendants, to include SHAC. On July 26, 1995, the Plaintiff filed a motion to amend complaint. On August 24, 1995, Jury were drawn from Judge Norton's panel. At the September 13, 1995 pretrial conference, Plaintiff requested that Plaintiff's motion to amend complaint and Plaintiff's motion for relief from judgment or order as it pertains to conspiracy and to SHAC as a defendant, be addressed. Both motions were not returned in Plaintiff's favor. Then Plaintiff's motion for summary judgment (see Appendix B and N) received less than a perfunctory review.

On October 30, 1995, at 9:00 a.m., a final pretrial conference was held and at 11:00 a.m., a jury trial began. On November 30, 1995, an appeal was filed with the United States Court of Appeals for the 4th Circuit from the final judgment entered on November 1, 1995 and to restore the count of conspiracy and add SHAC back as a defendant; based on pretrial motions which went unnoticed, discrimination, perjury, tampering of evidence, tampering of witnesses, interference with court business/obstruction of justice, improper conduct of

attorneys, fraudulent evidence submitted at trial, submission of hearsay evidence, discovery violations, misleading jurors/compromise sequestration, and other unfair tactics used at trial, Voir Dire questions to jury not asked, witnesses lack of personal knowledge, treatment of Pro Se versus attorneys, surprise evidence submitted at trial, improper statements made in the presence of the jury all of which amounts to constitutional rights violated. (Each of these violations are discussed in turn in Appellants Formal Brief of Appeal with Supplements, Appendix B, and D). After obtaining lower court transcripts, it was discovered that the transcripts received had been falsified (Here after "Bogus Transcripts"). Thus, an additional request for a Grand jury investigation into the whole ordeal was requested.

REASONS FOR GRANTING THE WRIT

This petition explains the petitioner's allegations of conspiracy, sexual harassment (violation of the Title VII Civil Rights Act of 1964) and deals with various other issues that were raised in the course of the pretrial conferences, the trial and issues that were raised in the course of filing an appeal with the United States Court of Appeals for the 4th Circuit. It is important that this case be put in its proper perspective because Plaintiff's complaint does not simply raise the issue of sexual harassment, it challenges the fact that State Officials ignored the evidence to simply support Ms. Frankie Keels (who was one of their own), nor is this case simply about abstract illegality or isolated violations of a person's rights. Rather, this case is about wanton abuse of power so

strong that most individuals are defenseless against it. It is about public officials purposefully denying plaintiff equal protection under the law.

A. Conspiracy – South Carolina Human Affairs Commission (SHAC) operated in concert with the State Board for Technical and Comprehensive Education (SBTCE) to deny Avaine Strong a fair "determination of reasonable cause." Records were purged to cover their tracks (See Appendix B and F). There is no basis for this determination. To add, SHAC fabricated that it had given Strong an exit interviews. Appendix O alone is very compelling. Plus, from Mr. Charles' testimony (SHAC's investigator), obviously, there was no investigation. Mr. Charles' testimony is full of "uncertainties." Another point is that there were many questions about this investigation that needed answering. Strong challenged the investigation. However, Magistrate Carr instructed Strong & lawyers for defendants, not to ask questions pertaining to the "findings." The attorney did ask this question (See Appendix B). This left Strong defenseless to cleanup the damage made in presence of the jury. This and other improper statements were made in the presence of the jury. In official position, papers to SHAC(each line of this paper contains nothing but carefully put together lies . . . each of which has been proven to be a lie). It was stated that Keels only returned a few of Strong's calls but, it was a simple matter to disprove the official statement. Furthermore, calls did not stop until it was finally known to Keels that a grievance with SHAC had been filed.

B. SHAC was improperly dismissed as a defendant (See Appendix B) and above.

C. Pretrial motions were not timely considered or not considered at all.

1) Motion for witnesses, (entered 10/2/96).

2) Motion to strike (entered 8/21/95 with trial brief, See Appendix H).

3) Pressing motion for summary judgment (See Appendix N).

4) Motion to amend (all are discussed in plaintiff pretrial brief (entered 08/10/94).

5) Request for Settlement went unnoticed (Appendix F). Magistrate Carr stated that petitioner was entitled to at least $150,000.

D) There were many unfair tactics used throughout the proceeding. All of which are fully explained in Appendix B and D. The trial judge was careful not to allow any of petitioner's claims without what the judge or considered "good evidence." However, the judge allowed the respondent's to use as a defense the claim that Strong pursued Ms. Keels and set her up in order to gain his position back as dean, without proof. In fact, all the evidence showed just the opposite. The volume of cards, letters and picture were from Keels to Strong. See Appendix B and O. Furthermore, Keels calls to Strong doubled those of Strong and continued long after he had stopped calling her. Plaintiff asked that defense be struck as immaterial, misleading, fraudulent and insufficient as a matter of law. Lastly, after SHAC was improper dismissed, the defendants were: the State Board for Technical and Comprehensive Education, Denmark Technical College Area Commission, Denmark Technical College and Frankie Keels. A review of Appendix G will show that no verdict was rendered pertaining to Denmark Technical College.

F. Lower Court transcripts docket (See Appendix J and K).

At trial, Albert Ulmer stated that Mendenhall was his number one friend, and Strong was his number two friend. Strong proved this was not be true, "Bogus Transcripts" have Ulmer saying to Strong, "Mr. Mendenhall and I would talk the same as you and I would talk, in other words, the point is that I could not base whether Mendenhall was an ace buddy or whether you were an ace buddy, I couldn't." Incidently, these are not Strong's true questions, but, nevertheless, Ulmer and Mendenhall friendship extended some 20 plus years. Ulmer has only known Strong for approximately 4 years and never were they friends. See attached letter from Ulmer to then President Curtis Bryan (Appendix E).

The point to the line of questioning was to prove Ulmer was never told any such nonsense. On day one of the trial, Ms. Frankie Keels had admitted to not knowing of such plans. Thus, if Keels never knew, then President Brister never knew nor could his assistant (Mendenhall) have known.

The complete testimony of Joann Boyd-Scotland made under oath, absent of the jury, is now missing from "Bogus Transcripts." One of Bennie Belton's affidavit (he is now deceased), was to refute Boyd-Scotland's testimony. This trickery was to get Belton, who was very instrumental to Strong's case, away from the trial. Many other false statements were made under oath which is easily proven (Appendix B).

It is unthinkable and disheartening to know that court officials would lower themselves to such tactics. However, some statements now made in "Bogus Transcripts" do not correlate with civil docket for case # 94- CV-1909. At any rate, this only supports the fact that the court, State Officials and Defendants support a custom, practice or policy that allows state

officials to violate civil and constitutionally protected rights (See Appendix K for more). A review of Plaintiff's closing argument may also share clues on Bogus Transcripts (Not included).

G. Discrimination – The actions by the defendants and others at all times related herein, acted wantonly, recklessly, willfully and maliciously to show a conscious indifference toward the plaintiff. Possible reason for the discrimination (1) Racially Motivated – Black male complaint of sexual harassment not viewed in the same spirit as female complaint. It's a well known fact of history that Black women and Black men have always been viewed differently by White America. Black women were less likely to become the victims of destructive racial stereotyping than black males. Southern literature tried to shape Black males as "boys" and tried to shape them into fawning irresponsible buffoons. Then, too, black women were rarely seen as physically threatening, whereas, black males (despite being thought of as childlike) were often considered potential murderers and lustful rapists (Source: The United States Combined Edition by Winthrop D. Jordan, Leon F. Litwack, Published by Prentice Hall). Black males have always been the most discriminated persons in the south. As late as 1969, a government agency published a report stating "the black male has become obsolete in the work place." The Supreme Court has used the equal-protection language of the Fourteenth Amendment to strike down statutory sex bias across the country. Furthermore, Title VII of the Civil Rights Act makes it illegal to discriminate in employment because of sex, race or color; whereby, Title IX of the Education amendments makes it illegal for federally assisted educational programs to discriminate on account of sex. Lastly cases such as *Meritor Sav. Bk. v. Vinson*, 477 U.S. 57 (1986) and *Ellison v. Brady*, 924

Fed. 872 (1991) gives a clear definition of sexual harassment. These standards apply be it female versus males or vice versa. The verdict, in this case, directly conflicts with relevant decisions of this court.

2) Pro Se vs. Lawyer

Pro Se was treated inferior to lawyers. A true comparison of Pro Se to lawyers, will show that state agencies were given preferential treatment over Strong (See Appellant's supplemental brief). It has already been established that Pro Se are held to less stringent standards than lawyers. *Biehvenu v. Beauregard Parish Police Jury*, 705 F. 2d 1457 (1983, CA 5 La) and *Beaudett v. City of Hampton*, 775 F. 2d 1274 (4th Cir. 1985). At no time was Pro Se given the benefit of the doubt but, was held to no less than a greater standard than lawyers. Strong proved sexual harassment. Keels purposely created an intimidating, hostile offensive work environment prior to Strong's acquiescing; quid pro quo during, and a return to a hostile environment after rejecting Keels.

Conspiracy/Breech of Trust – initially the claim of conspiracy was based on Amendment I (Violation of Freedom of Speech). In that the sole reason for Strong's demise or singling out was because of a statement he made as Chairman of the Engineering Division in support of President Curtis Bryan (Appendix O). After all that has transpired, this amendment still applies for Strong has a right to petition the Federal government to correct a wrong. Thus, it is incumbent on the Federal government to correct a wrong and not allow a miscarriage of justice to go unnoticed. A betrayal of expectation and the 14th Amendment have been violated.

Equal protection of the laws has always been a challenge of Strong, which would leave anyone disillusioned and disenchanted. In summary, SHAC wrongfully and willfully withheld evidence to in retrospect support its reckless finding of "no reasonable cause." Lower court officials and all defendants participated in a cover-up by distorting the facts and falsifying records.

J. Abuse of Power – It was only because of their positions that such a machination could be put into motion; banking on the fact that the plot is so sinister that it would be unbelievable or no one would care. After all, the plaintiff is a minority pro se. A grave breach of official decorum has been committed and thus, denying Strong of his fundamental and procedural rights. All officials used their office and position violates Strong's Constitutional Rights as well as the following criminal acts:

   1) Mail Fraud – Bogus Transcripts were sent through the U.S. mail. These were certified to be bona fide when in actuality they were counterfeit. (Certified by Ms. LaVon E. McNaughton).

   2) Extortion – used their position to secure funds for a product not delivered.

   3) Hate crimes, perjury, cover-up, conspiracy, obstruction of justice and possible racketeering.

Integrity has been compromised. These acts are in direct conflict with the U.S. Constitution, in particular Article VI, Sections 2 and 3. No one should be above the law. Appellant's application for leave to proceed on appealing forma pauperis was denied with no bases. Appellant, a full-time student demonstrated sufficiently an inability to paid. (See Appendix I for order.)

CONCLUSION

Strong has been the victim of every cruel decision decided. I respectfully request the court to overturn each and every decision to include the motion to continue as Forma Pauperis, and that the verdict be overturned or a new trial set with change of venue. Strong has reserved the right to overturn each decision, all of which has been previously challenged, by timely objection at District Court. Although some wording may appear different, the theme remains the same. It was Oliver Wendell Holmes, Jr. (appointed to the United States Supreme Court in 1902) who advocated "law like life, is constantly evolving and that judges should be freed of the restraints of precedent and blind tradition, that law would develop and serve society by responding to its needs and reflecting its changes." (Source: The Common Law, 1881). This petition contains issues of great public concern. The entire community must be reassured that citizens' rights are not mere abstract notions to be blatantly, blithely ignored by public officials. Every person at DTC must be reassured that his/her rights have substance, that self-righteous officials will not be permitted to ignore personal rights. It would have been fair if the Appeals Court did not limit its opinion to only those statements which the attorneys for the defendants responded. A review of appellant's formal brief and supplementals will reveal there were more serious issues raised. Thus, a complete review of Appendix B, and D should provide sufficient information to address other questions presented for review. Furthermore, the judge allowed Anderson Nash's letter Hayes' affidavit and other hearsay evidence to be submitted as evidence for defendants, but none of Strong's affidavits

or records previously submitted to a government agency. It is still not clear what basis the Appeals' Court used to claim Strong failed to authenticate cassette tape. It is important to note that appellant's brief was filed long before the filing of bogus transcripts. All was done with malice to underscore the appellees' version of the truth. Also, note the material and evidence submitted to lower courts were obviously more comprehensive. For the foregoing reasons, I pray that the Supreme Court reaches a judgment that will proclaim to the community that the Constitution still lives at DTC, South Carolina and in the United States by granting his application for a writ of certiorari.

I do hereby certify that the petition and exhibits attached hereto to be true and correct to the best of my knowledge and belief. "Equal Justice Under Law."

Respectfully submitted,

AVAINE STRONG
Petitioner Pro Se
P.O. Box 26278
Washington, DC 20001
(202) 806-6261

November 20, 1997

APPENDIX A

UNPUBLISHED

UNITED STATES COUT [sic] OF APPEALS FOR THE FOURTH CIRCUIT

Avaine Strong,

Plaintiff-Appellant

v.

State Board For Technical And Comprehensive Education; Denmark Technical College Area Commission; Frankie Keels,

Defendants-Appellees, No. 95-3111

and

State of South Carolina Human Affairs Commission;

Denmark Technical College,

Defendants.

Appeal from the united States District Court for the District of South Carolina, at Charleston. David C. Norton, District Judge; Robert S. Carr, Magistrate Judge. (CA-94-1823 – 18AJ, CA-94-1909-5-18AJ)

Submitted: June 17, 1997

Decided: July 21, 1997

Before WIDENER, WILKINS, AND HAMILTON. Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Avaine Strong, Appellant Pro SE. Stephen Carrington Mitchell, Ellzey & Brooks, L. L. C., Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36 ©.

1a

Strong V. State Board

OPINION

PER CURIAM:

Avaine Strong appeals from a district court judgment issued pursuant to a jury verdict finding in favor of Dedendants [sic] in this civil action arising out of Strong's former employment with Denmark Technical College (DTC). The district court granted summary judgment to Defendants on various state tort claims, but permitted Strong's claim of sexual harassement [sic] during his former employment to proceed to the jury.

On appeal, Strong does not challenge the district court's grant of summary judgment, except to the extent that the court disposed of his claim for civil conspiracy. We note that Strong abandons those claims which he does not challenge. *See Tucker v. Waddell,* 83 F. 3d 688, 690 n. 1 (4th Cir. 1996). Moreover, we affirm the district court's grant of summary judgement on the conspiracy claim,because it is clear that Strong's allegations merely

incorporate the other allegations. *See Todd v. South Carolina Farm Mut. Ins. Co.*, 278 S. E. 2d 607, 611 (S.C. 1981).

Strong next raises a host of issues which are inappropriate for appellate review. He challenges the credibility of witnesses who testified at his trial. But questions of witness credibility lie within the exclusive province of the jury. *See Murdaugh Volkswagen, Inc. v. First Nat'l Bank*, 801 F.2d 719, 725 (4th Cir. 1986). He alleges that defense attorneys obstructed justice by tampering with witnesses.

But, Strong did not bring this matter to the attention of the district court, and this court will not consider issues raised initially on appeal unless there is plain error which result in a fundamental miscarriage of justice if left uncorrected. *See Muth v. United States*, 1F.3d 246, 250 (4th Cir. 1993); *Trandes Corp. v. Guy Atkinson Co.*, 996 F.2d 655, 665 (4th Cir. 1993). No such circumstances apply in this case. Strong's claim that the district court permitted him insufficient time to call his witnesses at trial also falls under this analysis.

Similarly, a party waives appellate review of a district court's descisions [sic] concerning the admission of evidence if he fails to timely object to those rulings at trial. *See* Fed. R. Evid. 103 (a); *DiPaola v. Riddle*, 581 F.2d 1111, 1113 (4th Cir. 1978). We reject Strong's challenges to allegedly hearsay evidence introduced by the Defendants in this case because Strong failed to preserve those challenges by timely objecting below. We also find that Strong may not seek relief on appeal for any failure of the district court to rule on his pretrial motions, because in such case a party is obligated to press for a ruling if the court does not make one. *See United States v. Jackson*, 485

F.2d 300, 303 (7th Cir. 1973). Moreover, we find no abuse of discretion in the district court's decision to exclude portions of Strong's evidence, *See Benedi v. McNeil-P.P.C., Inc.*, 66 F.3d 1378, 1383 (4th Cir. 1995) (Citing standard of review for evidentiary rulings). The district court (1996) properly excluded a cassette tape because Strong failed to authenticate it, and denied admission of certain affidavits and a written statement by Strong because the evidence was hearsay.

Strong also charges that Defendants were uncooperative in providing discovery. If so, Strong could have and should have requested the district court to impose appropriate sanctions pursuant to the procedures provided in Fed. R. Civ. P. 37. He did not avail himself of this remedy.

Strong's remaining contentions on appeal are insufficiently developed and generally fail to clarify how Strong was prejudiced. Because these arguments were not properly preserved and presented for our review, we decline to address them. According, the judgment order of the district court is affirmed. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. We also deny Strong's motion for an investigation of the conduction of his trial by the grand jury and the FBI.

AFFIRMED

APPENDIX B

NOTICE OF APPEAL TO A COURT OF APPEAL FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

United States District Court for the
Charleston District of South Carolina
Filed: November 30, 1995

AVAINE STRONG,

Plaintiff,

vs.

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION
111 EXECUTIVE CENTER DRIVE
COLUMBIA, SC 29210-8424

Defendant

SOUTH CAROLINA HUMAN AFFAIRS COMMISSION
2611 FOREST DRIVE
SUITE 200 COLUMBIA, SC 29240

Defendant

DENMARK TECHNICAL COLLEGE AREA COMMISSION
BLATT BLVD.
DENMARK, SC 29042

Defendant

DENMARK TECHNICAL COLLEGE
BLATT BLVD.
DENMARK, SC 29042

Defendant

FRANKIE KEELS
125 SILKWORTH PL
IRMO, SC 29063

Defendant

Civil Action No.: 2:94-1823-18AJ

Civil Action No.: 5:94-1909-18AJ

NOTICE OF APPEAL

Notice is hereby given that Avaine Strong, Plaintiff in the above named case hereby appeals to the Unites [sic] States Court of Appeals for the 4th Circuit from the final judgment entered in this action on the 1st day of November 1995.

/s/ Avaine Strong
Avaine Strong, Plaintiff Pro Se
P. O. Box 639
Denmark, SC 29042

Appellant's BRIEF

Table of Contents

page

I. ATTACHMENTS..... 1

II. TABLE OF AUTHORITIES..... 2

III. HISTORY OF THE CASE..... 3

IV. SUMMARY..... 5

V. FACTS BEARING ON CASE..... 6

A. CONSPIRACY..... 6

B. PERJURY..... 9

1. ALBERT F. ULMER..... 9

2. DOUGLAS BRISTER..... 10

3. H. McLEAN HOLDERFIELD..... 10

4. FRANKIE E. KEELS..... 11

5. JOANN BOYD-SCOTLAND..... 14

6. LEROY MOSELY..... 15

7. SANITA SAVAGE..... 15

C. TAMPERING OF WITNESSES 15

1. THE ATTORNEYS FOR THE DEFENDANTS

2. JOANN BOYD-SCOTLAND

D. INTERFERENCE WITH COURT BUSINESS 16

1. THE ATTORNEYS FOR THE DEFENDANTS

2. JOANN BOYD-SCOTLAND

E. IMRPOPER [sic] CONDUCT OF ATTORNEYS..... 16

F. FRAUDULENT EVIDENCE SUBMITTED AT TRIAL/VIOLATION OF FED. CIV. R.30 (E)..... 16

G. OTHER KEY POTENTIAL WITNESSES NOT AVAILABLE AT TRIAL 17

H. SUBMISSION OF HEARSAY EVIDENCE 18

I. NEW EVIDENCE..... 19

J. SUPPRESSION OF EVIDENCE..... 20

K. FALSE WITNESSES/TESTIMONIES 20

L. DISCOVERY VIOLATIONS 20

VI. CONCLUSION 21

ATTACHMENTS

TAB **PAGE REF.**

A. Telephone records (defendant) exhibit 31 11

B. Position paper exhibit 38 .....6, 11, 14, 15

C. SBTCE letter to SHAC dtd December 22, 1993 exhibit 39 8

D. Letter to EEOC dtd August 8, 1995 exhibit 43 8

E. Letter to Rick Charles from Plaintiff March 5, 1995 exhibit 44 8

F. Christmas card (def. Exh. 28) exhibit 47 13

G. Letter to Bostick from SCSU dtd May 26, 1994 exhibit 58 19

H. Letter to SCSU from Bostick dtd July 1993 exhibit 59 19

I. Advertiser-Herald June 17, 1993 exhibit 61.....19

J. Letter to Boyd and Mosely plus card June 1, 1993 exhibit 68 15

K. Letter to Boyd request lab etc. June 29, 1993 exhibit 83 19

L. Telephone records (Plaintiff) exhibit 118 11

M. Plaintiff's addendum to supplemental motion to strike file May 19, 1995.....17

N. Plaintiff's motion for relief from judgment or order filed July 18, 1994.....5, 8, 2

O. Plaintiff's motion to amend filed July 31, 1995 5

P. Plaintiff's Pretrial brief filed August 18, 1995 17

Q. Plaintiff's Pretrial brief (supp) filed August 31, 1995 17

R. Plaintiff's Pretrial brief (add) filed September 11, 1995 17

S. Plaintiff's motion for additional witnesses filed September 21, 1995.....18

T. Affidavit Belton 17, 18

U. Affidavit 15

V. Affidavit-Belton.....16, 18

W. Subcontract to DTC.....11, 18

X. Account of daily activities surrounding Keels exhibit 82 .....11, 19

Y. Pictures 13

Z. Notice of meeting at SBTCE 21.....21

In actuality, the conspiracy and cover-up continued, even at trial, with the volume of lies that permeated throughout the courtroom by the defendants. It was an abomination and made a caricature of the judicial system and justice.

At any rate, the Plaintiff proved in court that he was demoted without cause and sexually harassed (hostile environment); others failed to take proper steps to investigate Keels' behavior, lied and sanctioned the violations (Mosley's testimony, exhibit 38 at tab B). The Defendants' story that Plaintiff schemed to get his job back and pursued a relationship with Keels was a grotesquely absurd exaggeration thought up by the Defendants after it became known that a sexual harassment grievance had been filed with SHAC (See Keels' testimony, day 1 of trial).

Besides proving his case, other issues and illegalities with this case are listed below. The order in which these illegalities are listed is by no means, an attempt to imply weight or to express each issue in a sequence of relative importance.

V. FACTS BEARING ON CASE

A. CONSPIRACY

A civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the Plaintiff, (3) which causes him special damage *v. Chesterfield General Hospital, Inc.*, 344 S. E. 2d 379 (S.C. Ct. App.986). Conspiracy is the conspiring or combining together to do an unlawful act to the detriment of another of the doing of a lawful act in an unlawful way to the detriment of another *Todd v. South Carolina Farm Bureau Mutual Insurance*, 278 S. E.2d 607, 611 (S. C. Ct. App. 1981), rev. in part on other grounds, 336 S. E. 2d 472 (1985).

It has always been the Plaintiff's contention that a travesty of justice took place because a few public officials elevated their personal biases, prejudices and vindictiveness above the Constitution and laws of the United States, and in so doing, trampled virtually every notion of fair play and public trust in order to protect one of their own in an attempt to find and subsequently back up a recommendation of "no reasonable cause" to SHAC.

These public officials DTC, DTC are commission SBTCE abused their offices and public trust because they chose to cover up the action of Ms. Keels and failed to take proper steps to investigate her behavior.

After the release of Dr. Curtis Bryan, former president of DTC, the Plaintiff became the target of deliberate and wrongful conduct perpetuated by keels and Brister, emanating from the SBTCE. Before Bryan's release, the Plaintiff was known to speak favorably of his president.

Now every moment, action, task needed to be explained in minuscule detail. Keels, knowing of the prejudice that existed toward the Plaintiff, could and did purposely create an intimidating, hostile, and offensive work environment.

After a grievance was filed with SHAC, it became known to all that a sexual harassment charge had been filed. Boyd-Scotland and Mosely held a meeting with the Plaintiff to form a defense for Keels. Plaintiff's later responded with a letter dated June 1, 1993. Never was there a reply from either Boyd or Mosely. From Mosely's testimony on day 3 of trial, nothing was done in response to Paintiff's [sic] letter.

During SHAC's investigation, many letter were written to SHAC by Plaintiff, outlining his allegations. Plaintiff requested and agreed on a hearing but was later informed that Keels refused to meet, and therefore, there would be no hearing (tab E). The next couple of days, a determination was made, stating "no reasonable cause" to believe the respondents have violated section 1-13-80 (a) of the SC code of laws of 1976. "The determination further reads, that, "The commissions' findings of facts have been reviewed with both the respondents and the complainants during the commissioners exit interview." NEVER WAS THE COMPLAINANT GIVEN AN EXIT INTERVIEW OR FINDINGS OF FACTS SHARED. This finding was based strictly on lies by Mosely, Boyd-Scotland, and Keels as well as SBTCE's recommendation of "no reasonable cause" (tab C). This became even more evidential, when Plaintiff reviewed the files at SHAC #2-93-243SH pertaining to this case. There were obvious inconsistencies in Keels' story. Plaintiff was unable to get

a copy of these files under the Freedom Of Information Act. Upon reviewing these files for a second time through subpoena, it was revealed that now the files had been altered (see tab N for Heyward's affidavit). Upon conferring with EEOC, Plaintiff was reassured that he was in fact entitled to this information (see tab D).

First and foremost, considering all that has transpired in this case as it relates to SHAC, it is with strong belief that a declaratory judgment should have been held against SHAC.

- It is improper for Attorneys to motion for dismissal of a client they did not represent.
- Plaintiff filed charges in the proper court.
- SHAC conducted a superficial investigation (violation of State and Federal laws).
- SHAC abused their offices and public trust.
- SHAC tampered with evidence.

Secondly, in that Plaintiff was unsuccessful in restoring the charge of conspiracy to all including SHAC, it was agreed that no questions surrounding SHAC's investigation would be asked or entertained. For the attorney to ask Mr. Rick Charles of the SHAC's finding was a breech of the agreement. For the jury to be told that a "no reasonable cause" was found by SHAC had far reaching consequence. In the jury's minds, it is a done deal, no reasonable cause, end of discussion. Plaintiff could not argue the findings without going into the investigation.

B. PERJURY

1) Albert F. Ulmer

All of the testimony given by Albert Ulmer, again was a grotesquely, absurd exaggerated form of any representation. Court transcript validates this fact. It is unethical to bring witnesses to testify knowingly that they are committing perjury. It is this king [sic] of perjury of the highest form that makes a mockery of our juridical [sic] system.

2. Douglas Brister

Brister knew nothing about DTC or the Plaintiff to include the division names, who the deans were during his interim presidency, or Plaintiff's job description. Those deans he named were incorrect as well as incomplete. He knew less about the Electromechanical Engineering Technology Program (ELMT). His testimony of having read a report that called for the ELMT program to implemented by 1990 is hearsay and a fabrication. DTC. Didn't receive a contract to do the work until Dec. 1991 (see tab W). It was shortly thereafter that Brister arrived to DTC. Brister has more problems with dates. He states that he asked Keels to read a policy to deans in June 1992, though keels wasn't the supervisor until August 1992. Brister's testimony was nothing less than lies.

3. H. M. Holderfield

Holderfield knew nothing about Plaintiff's performance and the ELMT as it relates to DTC. His testimony

of having read reports is hearsay and fabrication. He connects these reports with the reason Bryan was released. Bryan was released a few months after the program was awarded (tab W). Holderfield knew nothing of the ELMT program, nor the connection between Westinghouse SRS, SCSU or SCUREF's involvement. Dr. Sandrapaty and William McGhee in their testimony, gave a detailed explanation of the project's operation and existence.

4) Frankie Keels

Gifts and Only Why She Went Out

Day 1 of trial – Only went out because of all the gifts and that the Plaintiff was so charming; she names plants, flowers (which was never given), a ring, perfume, and a coat (not given). This contradicts (exhibit 38 tab B) where Keels, states she only went out at the suggestion of a friend.

Day 3 of trial – Upon cross examination, Keels states she received a coat and ring on the same day of the first date, again contradicting day 1 of the testimony.

Telephone Calls Facts – Plaintiff called not more than 42 times totaling 532 minutes. Keels called at least 102 times and 1159 minutes (tabs A & L). Those calls made through the DTC phone system could not be verified. When a request was made for DTC's phone records during discovery, Plaintiff was told that there was a computer problem.

Day 1 of trial – Keels says she and Plaintiff talked all the time. This statement is indirect contradiction with

(exhibit 38 tab B), where she supposedly only returned a few of the Plaintiff's phone calls. Keel's explanation for calling March 3rd and 4th, 1993, was because of faculty senate vote of "no confidence", but this vote wasn't until March 5, 1993. Detailed account of conversation is located at tab X. Which centers around conversations of Keels accusing the Plaintiff of having impregnated her. These accounts correlate to Keels' phone records (tab A) obtained about one (1) year after this document was created. A month before this, February 11, 1993, Keels made the threats "I will get you, I will pay you back."

Day 1 of trial – Keels admitted that she knew of no apparent scheme until after the 25 April 1993 phone calls. Therefore, she continued to call.

Day 3 of trial – Referencing the April 25, 1993 phone call, she says she received a call from Plaintiff (unsupported by any evidence) and returned his call 3 times (tab A).

Day 3 of trial – Keels explains that her calls may out number the Plaintiff's calls because many times she would receive his answering device and hang up. While this may be true in some case, in that he was screening his calls from her, it's not true in most cases. In particular, see page 6 (December 30-January 11, 1993) of tab A. Plaintiff had intensifies [sic] his efforts to break loose of Keels' demands.

Day 1 of trial – Keels' lied about never being in Orangeburg Jan, 10, 1993. After phone record showed her to be a liar, she changed her testimony to another lie.

Day 2 of trial – Maple's testimony centers around Keels' conversation at a table with 4 DTC employees (Maple, Haynes, Anderson, and Young), in late October 92. This conversation centers around failed attempts to get the person she works with at DTC to notice her.

Day 3 of trial – Keels' lied and says she was not talking to the four (4) people at the table, not was this person someone she works with. Haynes' affidavit state differently (see tab T).

Much of her testimony just doesn't make sense; it just does not add up. Keels has characterized the Plaintiff an intrusive, dangerous and someone to be cautious of from start to finish. Yet, she admits to taking him to her parents' home for dinner upon his first visit to her church supposedly uninvited and later that same night gives him a cal [sic] at his residence (Nov. 22, 1992, tab A).

Plaintiff shows up at Keels' home again supposedly uninvited (Nov. 26, 1992) and the situation was embarrassing, she says, but again, she calls (Nov. 26, 1992, tab A).

The day after the supposedly uninvited visit at Keels' home, Rentz brings Keels to Plaintiff's apartment in Orangeburg, S. C. (Nov. 27, 1992).

The cards (Christmas, Birthday and Valentine) Keels admits to sending to the Plaintiff (tab F). Still this does not show caution. Keels explains the volume of pictures in Plaintiff's possession as perhaps stolen from her (tab Y), but admits to sending card, only because they proved that she did in fact send them. Keels' explanation of how Plaintiff is knowledgeable of how her house looks inside,

is that she showed her home to Savage and McFadden , while Plaintiff was present. One problem with this testimony is why now show house to her best friend and boyfriend (McFadden). Keels had been in the house for some time. McFadden was in Columbia, S.C. at least every other weekend, according to Savage's testimony. Again, none of this makes any sense. No one in her right mind would show her home to someone they are cautious of; leave notes for him at his home or leave him alone in her home, so that they can have the opportunity to steal from her, or spend New Year's eve and night with him. The truth of the matter is, Keels had given the Plaintiff a key to her home.

Keels' lies are too pervasive to list. These include but are not limited to:

(1) Lying about not having an instructor available on Aug. 31, 1992 (see Ed Salley's testimony Day 2).

(2) Not asking Plaintiff to withdraw grievance.

(3) Everybody knows where she attends church.

(4) She sends cards to everybody all the times.

(5) USC Women's basketball team/New Years' Day (see section I # 4).

(6) Not being in Orangeburg or calling.

(7) Many inconsistentices (position paper).

5. Boyd-Scotland

Boyd-Scotland knew nothing of DTC operations. When asked about ELMT, she lied about discussing this program with Joyce Rentz. There was a need for the student in the certification program to roll over into the associate program. Furthermore, Boyd-Scotland lies are validated in exhibit 38 (tab B). Boyd-Scotland perjured herself a second time in regard to a matter with Mr. Bennie Belton. See section on Tempering [sic] of Witnesses.

6. Leroy Mosely

Lied about discussing harassment complaint with Joyce Rentz. He further stipulate to lies in exhibit 38 (tab B). Furthermore, he admits to taking no action in regards to Plaintiff's letter submitted to him and Boyd-Scotland (tab J).

7. Sanita Savage

Savages' testimony is a complete lie. The date she gave about first meeting the Plaintiff was a lie. When it was pointed out that this date couldn't have been true, she changed to some vague date. When asked did she invite Plaintiff on a weekend trip to attend a basketball game, she replied she would never invite Plaintiff anywhere. This contradicts the fact that he's at her home.

C. TAMPERING OF WITNESSES

The night of October 30, 1995, Mr. Bennie Belton informed the Plaintiff that the attorneys for the defense had confronted several of the Plaintiff's witnesses (tab U). The following morning, October 31, 1995, Plaintiff witnessed some of the intimidation coming from Mr. Steve Mitchell toward Mr. Richard Charles of the South Carolina Human Affairs Commission. Mr. Charles stated to the Plaintiff that Mr. Mitchell just wants to win but Charles will not be intimidated. Therefore, Mr. Charles remained to testify. One witness who acquiesced to these tactics and left was Ms. Betty Dowling, a key witness for the Plaintiff, although a reluctant one, who just happened to be Ms. Keels' secretary while Keels was at DTC, and thus, a crucial one.

Fed. Civ. R. 30(e) states: If request by the deponent or a party before completion of deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and if there are changes in term or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them.

At no time was the deponent given ample time to make necessary changes and signed the deposition. After much delay and several failed attempts to review the transcripts, the Plaintiff only signed a document stipulating to reviewing part of the deposition. No in depth, thorough review was conducted because it was not allowed.

Subsequently, on May 19, 1995, the Plaintiff filed a motion to strike deposition. This was never addressed (tab M).

G. Other Key Witnesses Not Available at Trial

On August 18, 1995, Plaintiff filed his Pretrial Brief with potential witnesses at Federal Court in Columbia, South Carolina, and subsequent supplemental and addendum to this pretrial brief at the Federal Court in Charleston, South Carolina (tabs P, Q & R). At the August 24, 1995 hearing for selection of jurors, Plaintiff's entire witness list was not read to potential jurors. After informing Judge Carr that only a partial list was read, he asked that a motion be filed giving cogent reasons why these witnesses are needed. This motion was filed in Charleston on September 2, 1995. It was not until the pretrial conference at 9:00 AM on October 30, 1995, that Judge Carr said that these potential witnesses can be made to testify. Unfortunately, it was too late to facilitate serving subpoenas in time for these witnesses to be in court October, 30, 1995 or the following days (tab S).

H. Submission of Hearsay Evidence

All statements made regarding Plaintiff's performance were nothing but hearsay. Never was any evidence produced showing poor performance. All statements pertaining to some policy or report allegedly read by the defendant as it relates to Plaintiff's performance is hearsay.

I. New Evidence

1. Haynes' affidavit shows Keels perjured herself (tab T).
2. Beltons's affidavit shows Boyd-Scotland perjured herself (tab V).
3. Belton's affidavit shows attorney(s) conduct was bad and interfered with courts business (tab U).
4. University of South Carolina (USC) Women basketball team

On January 1, 1993, after finishing dinner at Savage's home around 12:3– AM the night before, Plaintiff had New Year's dinner at the home of one of Keel's "relatives" whose daughter, Michelle Murray, played basketball for USC. Most of the basketball team was there. The court reminded that Keels and her good friend Savage have gone on record saying that the Plaintiff left around 10:00 PM, December 31, 1992 and was never seen for some time later, if ever. Keels and Savage are co-partners with their lies. Furthermore, Savage is aware that Keels repeatedly invited Plaintiff to attend a USC home game, which he declined repeatedly. Plaintiff has stated that he didn't leave Keels' home in Columbia, South Carolina until January 2, 1993. The name of the daughter and her teammates' names were not known until recently.

J. Suppression of Evidence

Much of the evidence Plaintiff submitted was not allowed in at trial. Submission of this evidence was critical for the Plaintiff to prove every essential part of his claim by a "preponderance of the evidence" as given in

the *Court's Instructions to The Jury*. As a case in point, consider exhibit number 62, which is a voice cassette recording of Keels. This recording was made by Keels, the night before the demotion of the Plaintiff, the night the so called crisis, which Ed Salley has denounced. This cassette reveals the caller and the time of the call, which confirms the harassment, but more importantly, it reveals that Keels is a liar. For, if she held a class as long as she claimed she did, it would have been impossible for her to make a call at 7:10 PM. Tabs I, H, K, and G respectively serves as proof that: (1) The Plaintiff was responsible for the project. (2) During the Plaintiff's involvement, the project was on schedule. (3) Plaintiff attempted to make known the importance of the project to others. (4) After Plaintiff was no longer involved with the project, it fell far off schedule.

Exhibit number 82 (tab X) again is a written account or record of incidents involving Keels and the Plaintiff's times of calls (made by Keels) and the nature of these calls. Again, more importantly, the time of these calls are verified later by Keels' subpoenaed phone records. It is important to note that this verification occurred about a year after the Plaintiff had gone on record with his statements; this says a lot for his credibility. All of these are part of SHAC file number 3-93-243SH, public records.

Much of the objection to the evidence by the attorneys was based on their contention that evidence was hearsay or irrelevant. All of the evidence either goes toward performance, sexual harassment or to refute allegations made by the defendants. Federal rule of evidence 801 allows the evidence as admissible as proof of truth of the matter asserted. In other words, much if not all of the

evidence could have been admissible under the hearsay exclusion or hearsay exception rule, in that the probative value substantially outweighed any danger of unfair prejudice, confusion of the issues, misleading of the jury, undue delay or waste of time or cumulative evidence.

None of the Plaintiff's affidavits were allowed as evidence at the trial. Almost all of the affidavits were submitted to the attorneys for the defendants during discovery. In any event, there has been ample time allowed for any cross examination of these affiants. However, the attorneys for the defendants did present an invalid (due to date) affidavits of Judith Hayes, to stipulate that the plaintiff had read the deposition on January 10, 1995.

K. False Witnesses/Testimonies

(same as section V-B)

L. Discovery Violations (see also tab P)

1. Information in SHAC files not obtained.

Before SHAC was dismissed as one of the defendants, many attempts were made to the attorneys for the defendant to submit information located in SHAC file number 3-93-243SH. The attorneys state that they did not represent SHAC and that the plaintiff could get the information through the Freedom of Information Act. The remaining account are as outlined in section V-A and tab N.

2. Minutes of SBTCE not obtained.

Plaintiff was asked to attend a State Board meeting scheduled for May 27, 1992 at 10:00 AM (see tab Z). The meeting was chaired by a retired general, name unknown, and was recorded. However, when Plaintiff asked for a copy of the minutes of this meeting, Plaintiff was sent other minutes and was told that these were the only minutes. The minutes of the morning meeting would validate that the Plaintiff was very knowledgeable; more knowledgeable than Mendenhall, acting Vice President for academic affairs, and those at SBTCE knew this to be a fact. A key point to note is that this information was known long before the Plaintiff was demoted.

3. DTC phone records

DTC phone records would validate that many calls were made from DTC to Plaintiff after hours, However, after requesting these records, Plaintiff was told of a computer problem. Therefore, no records were produces.

VI. CONCLUSION

All the Defendant's witnesses were impugned, as each came forward with their insidious and misleading testimony, in an attempt to excoriate the Plaintiff. At no time was there any evidence submitted to support poor performance. The best any of the Defendants could do was to cavil about some book report or a class not being held (therefore, a crisis) which was proved false by Salley.

Precedent has already been set by similar situations where a hostile environment existed for the purpose of establishing a sexual discrimination claim. The conduct was sufficiently severe or pervasive to alter conditions of Plaintiff's employment and create an abusive working environment *(Ellison v. Brady)*.

Furthermore, EEOC guidelines recommended that an employer's remedy should be immediate and appropriate. Employers have a duty to "express strong disapproval of Sexual Harassment." "The commission and the courts have held for years that an employer is liable if a supervisor or an agent violates the Title VII, regardless of knowledge or any other mitigating factor." *(Meritor Sav. Bank, F SB v. Vinson)* Plaintiff only acquiesced to Keels' sexual demands. In the case of *Meritor v. Vinson*, the two had intercourse over forty-times.

Hopefully, justice will truly prevail and answers will be provided to the following:

1. Why no investigation for sexual harassment was conducted by either SBTCE, DTC or SHAC?

2. Why SHAC lied about giving Plaintiff an exit interview?

3. Why SBTCE supported Keels knowing she violated Title VII?

4. Why SHAC ruled in Keels favor suddenly and abruptly after she refused to meet for a hearing?

5. Why SHAC did not use its subpoena powers?

6. Why all the witnesses for the defense were willing to perjure themselves in Federal court?

7. Why it was necessary for attorneys for the Defendant, SBTCE and others to interfere with court business?

8. Why it was necessary for the attorneys. Defendants and others to practice improper conduct?

9. Why public officials abused their offices and public trust?

In addition, it was agreed that witnesses would remain outside the courtroom until their testimony was no longer needed. As it were, it ended up being an unfair disadvantage for the Plaintiff in that there was at least three (3) witnesses at all times present due to representation. Plaintiff had no prior knowledge that this would be the circumstance.

Wherefore, based on these and the aforementioned events, issues/episodes, it is highly recommended that this case be reopened or overturned with efforts to correct any deficiencies noted.

Respectfully Submitted,

/s/ Avaine Strong
Avaine Strong Plaintiff,
Pro Se

November 30, 1995

AVAINE STRONG VS. DENMARK TECHNICAL COLLEGE

Position Statement

At the time of the alleged sexual harassment charge, Ms. Frankie Keels (BF) was serving as interim Vice President of Educational Affairs. Ms. Keels is permanently assigned to the Instructional Division of the State Board for Technical And Comprehensive Education (SBTCE) as Curriculum Coordinator. Denmark Technical College's president had resigned immediately prior to Keel's temporary assignment and she was charged with finding and implementing solutions to certain identified weaknesses in the college academic area. She reported during her Denmark assignment to Dr. Douglas Brister (BM) who served as interim president during the search process for a permanent president.

Mr. Avaine Strong (BM) was Dean of the college's Industrial Division when Ms. Keels took over her temporary assignment. He initially reported directly to her. One of the problem areas among many others identified for improvement was the supervision of academic programs in the Industrial Division. Ms. Keels removed Mr. Strong from the Dean's position in the best interest of the college as permitted under the Faculty Compensation Plan (Procedure 8-2-102.1; VI, B-Conditions of Employment) during August 1992. While all Deans and Department Heads receive a temporary salary supplement and/or a reduction in teaching load, Mr. Strong lost his supplement and returned to teaching a full-load. Prior to her temporary appointment, as well as through her removal of Mr. Strong, there was no indication of social contact wither [sic] on or off the job by either Ms. Keels of Mr. Strong.

Mr. Strong remained as a faculty member, without Dean's responsibilities, however, he was assigned a full teaching load instructing in the disciplines of Math and Electronics Technology. After he became a full time faculty member, Ms. Keels had no direct contact in supervising Mr. Strong in his position as a faculty member. All academic assignments were communicated through the "acting dean" or in the presence of the dean.

Several weeks *after his removal from the position of Dean* (November 1992), Mr. Strong first contacted Ms. Keels at her home stating he wished to put the past aside and expressed and interest in friendship and/or a social relationship with her. Ms. Keels state at that time that such social contact might not be appropriate given the structure of their work relationship. She, however, suggested that perhaps such contact might be more appropriate when her temporary assignment was ended and she returned to her SBTCE assignment in Columbia.

Mr. Strong, however, continued to intensely pursue Ms. Keels with repeated calls to her home, uninvited visits to both her church and her home, and non-business contact at the college. When Mr. Strong "just happened to show up" at her church (located in a small isolated community outside Columbia), Ms. Keels states that she told him in very definite terms that he was being too intrusive and she did not want him showing up without being invited.

On another occasion, Ms. Keels hosted a family holiday celebration at her house. Mr. Strong showed up uninvited and unannounced again, and causing a situation whereby it would have been embarrassing and upsetting

to the guests to tell him to leave. Mr. Strong on this occasion manipulated the situation so that he stayed for the meal.

Ms. Keels admits to returning some of Mr. Strong's phone calls during this period and to being cordial during their phone conversations. While as hindsight, this could be construed as poor judgment, Ms. Keels felt that to be considerate and friendly might normalize their work relationship and stop the somewhat obsessive behavior on the part of Mr. Strong. Strong, however, increased his pursuit and repeatedly asked Ms. Keels to go out with him socially. After turning him down initially, but at the suggestion of a friend, she decided to accept Mr. Strong's invitation to dinner. She hoped to somehow appease Mr. Strong, give him the benefit of the doubt regarding his intentions, and perhaps if he didn't have a good time his interest in her would wane. She in fact accepted two social invitations. Both occasions were dinner arrangements with another couple present. Ms. Keels emphatically denies any romantic or sexual overtures/behavior on her part and in fact when Mr. Strong initiated such behavior as holding hands, etc. she refused.

The phone calls continued from Mr. Strong and while she did talk with him, Ms. Keels still believed that perhaps the relationship might still be a collegial one, after she returned to SBTCE.

The only major incident involving both parties occurred on April 21, 1993. An important meeting involving new program approval was scheduled with the Commission on Higher Education. Ms. Keels was one of the key administrative staff trying to obtain approval for a

major program. Mr. Strong was one of the key faculty needed at the meeting and was earlier invited by letter. Mr. Strong arrived considerably late which was not impressive to the approving organization. When Ms. Keels confronted him with his tardiness, Mr. Strong denied getting the letter stating the time and the date of the meeting. It was later established that he *had* received the letter thus, exposing his false denial.

After becoming aware that Mr. Strong had filed this charge, Dr. Joanne Boyd, college president, and Mr. Leroy Mosely, Associate Director for Human Resource Management, interviewed both parties. Mr. Strong did not ask for an investigation but the president felt that it was important to find out the truth and resolve any potential problems as soon as possible. While the inquiry was not a formal one, it is our belief that while perhaps Ms. Keels may have used some inappropriate judgment in continuing contact with Mr. Strong, she in no way sexually harassed Mr. Strong, neither in "quid pro quo" fashion nor in creating a hostile environment.

A relevant point is that the allegations of sexual harassment came about only *after* Strong was removed from the Dean's position. In fact, the charge was filed 8 months after his removal. Ms. Keels had no social or casual contact on or off campus prior to his removal. Another relevant point is that when comparing the behavior of both parties, it appears that Mr. Strong was significantly intrusive and intense in his pursuit of Ms. Keels. One could suggest that Mr. Strong may have committed harassment, not Ms. Keels.

Ms. Keels is now back at SBTCE in her regular permanent position, and Mr. Strong voluntarily resigned his employment with the college before the beginning of the current academic year. We ask for an expeditious judgment of "no reasonable cause" based on this information submitted.

I attest that the information in this position statement is true to the best of my knowledge and represent an accurate summary of the facts as I understand them.

/s/ Joanne Boyd — 10-29-93
Dr. Joanne Boyd — Date

/s/ Leroy Mosely, Jr. — 10-29-93
Leroy Mosely, Jr. — Date

/s/ Frankie Keels — 10-29-93
Ms. Frankie Keels — Date

AFFIDAVIT OF BENNIE BELTON

STATE OF SOUTH CAROLINA] [filed Nov 30, 1995]
] ss
COUNTY OF BAMBERG]

Comes now, BENNIE BELTON sui juris, and after being duly sworn, according to law, states that he is your affiant, that as your affiant he has first hand knowledge of the facts herein and believes these facts to be true to the best of his belief and knowledge. Your affiant is over the age of 21 and competent to testify.

1. On the morning of Wednesday, November 1, 1995, Dr. Joann Boyd-Scotland confronted your affiant about being allegedly illegal at the trial.

2. Your affiant informed Dr. Boyd-scotland that he had called into DTC for annual leave, and that Mr Strong is riding with your affiant.

3. Dr. Boyd-Scotland stated that annual leave must be approved in advance.

4. Your affiant stated to Boyd-Scotland that he would take leave without pay.

5. Boyd-Scotland stated that its not quite that simple.

6. Boyd-Scotland further stated that she thinks your affiant needs to get back to his job, and that she would give Mr. Strong a ride home.

7. Your affiant then departed for Denmark Technical College.

8. That evening around 4:45 pm your affiant received a telephone call while at DTC from Boyd-Scotland. She stated that she doesn't think that Mr. Strong wants to ride with her.

9. Your affiant returned to the Charleston District Court after the trial was over.

10. All statements made by Boyd-Scotland while on the witness stand as it relates to this matter is a complete fabrication.

* Further Affiant Sayeth Nought.

/s/ Bennie Belton
Bennie Belton

Sworn to and subscribed to by me on this the 9th day of November 1995, Arlee Bookard, notary Public, State of South Carolina.

/s/ Arlee D. Bookard
Arlee D. Bookard

My commission expires June 1997.

AFFIDAVIT OF BENNIE BELTON

STATE OF SOUTH CAROLINA] [filed Nov 30 1995]
] ss
COUNTY OF BAMBERG]

Comes now, BENNIE BELTON sui juris, and after being duly sworn, according to law, states that he is your affiant, that as your affiant he has first hand knowledge of the facts herein and believes these facts to be true to the best of his belief and knowledge. Your affiant is over the age of 21 and competent to testify.

On October 30 (corrected to read 31), 1995 your affiant observed the attorneys for the defense on several instances approach Mr Strong's witnesses, in an attempt to either discourage them from testifying, changing their testimony and thus committing perjury, or requesting that they depart from the Charleston District Courthouse altogether. At no time did any of Mr Strong's witnesses solicit the advice of these attorneys. * Further Affiant Sayeth Nought.

/s/ Bennie Belton
Bennie Belton

Sworn to and subscribed to by me on this the 9th day of November 1995, Arlee Bookard, notary Public, State of South Carolina.

/s/ Arlee D. Bookard
Arlee D. Bookard

My commission expires June 1997.

AFFIDAVIT OF NORMAN C. CAMP

STATE OF North Carolina]
] ss [entered 8/7/1994]
COUNTY OF Wake]

Comes now, Norman C. Camp, sui juris, and after being duly sworn, according to law, states that he is your affiant, that as your affiant he has first hand knowledge of the facts herein and believes these facts to be true to the best of his belief and knowledge. Your affiant is over the age of 21 and competent to testify.

1. Ms. Keels did indeed create an intimidating and hostile working environment from the very first day of her tenure at Denmark Technical College (7/1/92-6/30/93) as supervisor of the faculty. Only one member was apparently exempted from Ms. Keels' harassing tactics. That person was Mrs. Joyce L. Rentz, Ms Keels' friend and confidant.

2. The Plaintiff and your affiant were the deans of our respective academic divisions at the time of Ms. Keels arrival. From the first day,Plaintiff was under siege for one reason of another until Plaintiff yielded his dean's position to Mrs. Rentz. The reason for these attacks were alleged to be many.

1) Accusations of incompetence

2) Poor management of his division

3) Arrogance; and

4) A close relationship with the former president, Dr. Curtis Bryan.

3. As the Plaintiff's colleague of two years, your affiant found none of the aforementioned to be true. In fact, your affiant found the Plaintiff to be supportive, committed and competent in managing his division and performing his teaching duties. Among the employees at Denmark Tech, the Plaintiff was one of the strongest academically and managed his division with humanism and expertise.

4. Further, as the only two academic deans, we had an excellent working relationship with each other and the faculty members of both divisions. Since Ms. Keels tenure at Denmark Tech and the removal of the Plaintiff form [sic] his role as dean and instructor, there has been a constant deterioration on morale and esprit among the faculty of both divisions. Several competent faculty have left the college because of the hostile environment created by Ms Keels.

5. After the Plaintiff left his position as dean and assumed full time teaching responsibilities, matters between Plaintiff and Ms. Keels apparently improved dramatically and instantly. We wondered about the reasons for this, only to learn from several sources that there was now an alleged love affair between the two.

6. Lastly, during Keels separate orientation briefing as the VP, the regulations pertaining to demotion as allegedly read to Plaintiff was not read to your affiant.

Further Affiant Sayeth Nought.

/s/ Norman C. Camp
Norman C. Camp

Sworn to and subscribed to by me on this the 21st day of July 1994, Bettie S. Lee, Notary Public, State of South Carolina.

/s/ Bettie S. Lee
Bettie S. Lee

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

AVAINE STRONG, Plaintiff, vs. STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION, et al. Defendants	)	CIVIL ACTION NO.: 2:94-1823-18AJ CIVIL ACTION NO.: 5:94-1909-6BC MOTION TO COMPEL

Come now the Plaintiff timely to move this honorable court pursuant to Fed. R. Civ. P. 37(a), Motion to Compel and Fed. R. Civ. P. 7(b) in the above cases. Reasons for Plaintiff's motion will be enumerated in Plaintiff's brief. Attached hereto and incorporated herein by reference is a brief in support of this motion to strike, with a detailed prayer for specific relief request.

/s/ Avaine Strong
Avaine Strong
Plaintiff Pro Se
116 Park Place
Orangeburg, SC 29115

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 95-3111 [filed Jan 30 1996]

RE: Avaine Strong v. State Board for Technical and Comprehensive Education, et al

CA: 94-1823-2-18AJ, CA: 94-1909-5-18AJ

APPELLANT'S MEMORANDUM IN RESPONSE TO APPELLEES' RESPONSE TO APPELLANT'S FORMAL BRIEF

This memorandum is written in response to the appellees' response of appellant's brief, in hope of clearing up those mischaracterized statements provided by the appellees. It is to be noted that the appellees failed to provide comments to some issues, meager rhetoric or conclusionary statements at other times, or simply totally mischaracterized appellant's claims. During the discovery period, SHAC deliberately distorted the facts, as did other appellees at that time and subsequently. The appellees further revealed their awesome power by getting people to tell stories that were not true. Moreover, all of the appellees' witnesses lied with out fear of any reprisal. While a couple of the appellant's witnesses began catching "amnesia", holding back or becoming almost hostile as their testimony wandered away from the more accurate statements previously submitted in their affidavits.

1. Appellant's Conspiracy Claim Should Have Remained

Events remain as characterized in appellant's formal brief. Furthermore, Judge Carr suggested to appellant

that he would consider a declaratory judgment against SHAC, if appellant was willing to amend his complaint.

2. Pro Se Are Held To Less Stringent Standards Than Lawyers.

It is a fact, as pointed out in appellees' memorandum, "see Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir 1985)" that Pro Se are held to less stringent standards than lawyers. See also Haines v. Kerner (1972) 404 US SL, 30L Ed 2d 652, 92s ct 594, 16FR Serv 2d l reh den 405 US 948, 30L Ed 2d 819, 92s ct 963. As a result, Pro Se civil rights pleading are liberally construed. See also Biehvenu v. Beauregard Parish Police Jury (1983, CA5 La) 705 F2d 1457. In this case, the appellant has been held to the same, if not greater standard, as the lawyers. The number of advanced degrees the appellant possesses is immaterial. The appellant remains Pro Se and should be treated in according [sic] and not be penalized because he has attempted to do quality work.

3. Lower Court Addressed Attorneys' Misconduct.

Questions asked of Mr. Rick Charles of SHAC, was simply to verify that Ms Keels' statements provided to the Lower Court were inconsistent with many statements provided to SHAC. Never were any questions asked in regards to SHAC's procedural investigation, no indication of records being altered or tampered and thus undermining justice or SHAC's findings. Any reference of "no reasonable cause" mentioned by the appellant was in relation to SBTCE's finding/recommendation and SBTCE's support for Keels. At sidebar, Judge Carr said to

the attorneys that they never should have asked Mr. Charles about SHAC's findings.

There was never an issue of whether a subpoena was valid or invalid. Again, after it was observed that the attorneys were approaching the appellant's witnesses and requesting comments from them regarding witness fees and instructing them that they should depart if they, in fact had not received such fees in advance. The appellant then took this matter up with the Judge. Judge Carr stated to the attorneys that the appellant's witness fees was none of their concern. Furthermore, Judge Carr instructed the attorneys to never approach the appellant's witnesses when they did not solicit the attorneys advice. Because Mr. Belton and Mr. Charles did not succumb to the pressure of the attorneys is no indication that the attorneys did nothing wrong. It was not until after trial that the appellant became aware that Ms Dowling had departed.

4. Appellant's Claims Regarding Bench Conferences Are With Merit.

At sidebar, Judge Carr told the attorneys that his lawyer informed him that the jury overheard something regarding Mr Salley that they should not have heard. Judge Carr stated, "The next time I say stop. I mean Stop."

5. Appellant's Deposition Was Not Properly Admitted.

Reasons for not admitting appellant's deposition are as outlined in plaintiff's motion to strike. Although these

objections centers mainly around evidence being taken under duress, appellant not being given ample time for reviewing document, misleading or statements taken out of context; never the less, that portion of the document reviewed still contained statements improperly transcribed.

6. Appellees Mischaracterized The Issue Regarding Additional Witnesses.

Proper limiting of witnesses again is not the issue. While the lower court gave approval for additional witnesses; However, it was too late to serve subpoenas.

7. Discovery violations

Many attempts were made to ascertain information on the girl basketball player and her mother as well as other information stated in pretrial brief. For example, many attempts were made to gather information pertaining to Ms. Sanita Savage. The reply was always, " I have provided you with all the information available to me." However, soon as Savage became a witness for appellees, Appellant was provided this information, that the appellees always knew. Ms. Savage stipulated during the trial, this fact, by testifying that she is Keels best friend. This disturbing pattern of with holding information or giving bits and pieces was nothing short of the appellees' modus operandi. It was not until after appellant's motion to compel that the attorneys submitted bogus minutes.

Assertions remain as they are submitted in appellant's formal and supplemental brief. Besides this jury

not being sophisticated enough to deal with the topics: Keels being portrayed as fragile and the sole defendant on trial; or that being a black man makes no different [sic] to a jury, transcripts will support assertions that the trial jury ignored key evidence.

Respectfully Submitted,

/s/ Avaine Strong
Avaine Strong

APPENDIX E

DENMARK TECHNICAL COLLEGE
Solomon Blatt Blvd., P.O. Box 327, Denmark, SC 29042
803-793-3301

July 27, 1990

Curtis E. Bryan, President
Denmark Technical College
Post Office Box 327
Denmark, South Carolina 29042-0327

Dear Dr. Bryan

The purpose of this letter is to inform you that I am in the process of filing a formal grievance on the grounds of harassment and discrimination.

I have been a dedicated and qualified employee at Denmark Technical College since 1968. Since Mr. Avaine Strong has been employed as my supervisor, he has threatened me with bodily harm (a knife and sawedoff shotgun, he says he keeps in the trunk of his car). He yells and has cursed me out on several occasions. He has come to my shop to look for things to "nit pick" about. It has been my feeling that he goes out of his way to just harass and intimidate me.

I have consulted with my lawyer who has informed me that I should pursue the grievance process. I am hoping that the matter aforementioned can be resolved without such actions.

I look forward to hearing from you.

Sincerely,

/s/ Albert Ulmer
Albert Ulmer, Instructor

APPENDIX F

Avaine Strong
116 Park Place
Orangeburg, SC 29115
(803) 531-2553
June 30, 1995

The Honorable Robert S. Carr
United States Magistrate Judge
United States District Court
Holling Judicial Center
Meeting at Broad Street
Charleston, South Carolina 29401

Dear Magistrate Carr:

On June 20, 1995, I expressed to the court my concerns about the enormities of South Carolina Human Affairs Commission (SHAC). Upon reviewing the files at SHAC on 28 June 95, (Case # 3-93-243SH) at SHAC, I found that these files had been docketed (to use Mr. Richard Charles words, "purged by Ms. Ouzts"), to appear to be in conformance with that which Mr. Mitchell has submitted to the court.

A conversation between Mr. Charles and myself was witnessed by a disinterested person who has provided a statement, outlining the events (see attached). Mr. Charles said that he would repeat all of this under oath, if subpoenaed.

I am requesting that a court order be issued requiring SHAC to produce the missing excerpts or show cause. This latest action amount to nothing less than obstruction of justice and evidence tampering. Early on, it was misconduct for trust no sense of fair play, and fabrication

(i.e., exit interview). All of which points toward a conspiracy. It is understanding why Mr. Mitchell is bent on having SHAC dismissed as one of the defendants. Which is puzzling, since Mr. Mitchell supposedly never represented SHAC.

Still pending with the court, the Plantiff's [sic] Motion for Summary Judgement. I would like to be given a date to address this motion. Seemingly this should happen before the pretrial date already set. At this hearing, in light of the new discoveries, a declaration judgement should still remain in effect against SHAC and the charge of a conspiracy as set forth in Plantiff's [sic] Motion for Summary Judgement against all defendants.

I previously stated that my plans are to relocate but these plans are subject to change until this case is resolved.

In the meanwhile, a speedy reply would be much appreciated. If you should have any questions, please contact me.

Sincerely

/s/ Avaine Strong
Avaine Strong
Plaintiff, Pro Se

cc: Olgetree, Deakins, Nash, Smoak and Stewart.

AFFIDAVIT OF SHARLENE E. HEYWARD

STATE OF SOUTH CAROLINA]
] ss [entered 7/19/1995]
COUNTY OF BAMBERG]

On June 28, 1995, I Sharlene E. Heyward accompanied Mr. Avaine Strong to the South Carolina Human Affairs Commission to review and make copies of file # 3-93-2435H with Mr. Charles.

Shortly after signing in, we accompanied Mr. Charles to a back room where the file had been placed. While looking through the file, Mr. Strong made notice of items that were missing. He then called this to the attention of Mr. Charles. Mr. Charles began to look through the file and made notice of items that were not in place because they had been taken from the file. In Mr. Charles words, the file had been "purged".

Mr. Strong then asked if he could see Ms. Georgia Ouzts. Mr. Charles stated that Ms. Ouzts was busy at the moment, but we could wait for her in the lobby. We returned to the lobby area. While there, we spoke with Mr. Charles once more. At this time, Mr. Strong made mention of the conversations that Mr. Charles had with Ms. Frankie Keels that were written and were supposed to be in the file. Mr. Charles agreed that he had written those conversations down and that they were in the files. Some of the conversation included Ms. Keels stating that she didn't like nor keep the big, ugly ring that Mr. Strong tried to give to her. There was also mention of a leather coat. Mr. Strong asked Mr. Charles if he would repeat this. He said he would if he were subpoenaed. I served

him with a subpoena. During this time. Ms. Ouzts still had not given us any of her time. We then left.

END OF STATEMENT

/s/ Sharlene E. Heyward
Sharlene E. Heyward

Sworn to and subscribed to by me on this, the 30th day of June, at Denmark, SC by, Arlee Bookard Notary Public, State of South Carolina.

/s/ Arlee Bookard
Arlee Bookard
My commission expires June 1997 (seal)

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Avaine Strong,

Plaintiff,

-vs-

State Board For Technical And
Comprehensive Education
111 Executive Center Drive
Columbia, SC 29210-8424,

Denmark Technical College
Area Commission
Blatt Blvd
Denmark, SC 29042,

Frankie Keels
125 Silkworth Pl
Irmo, SC 29063

Defendant.

Judgment
[entered 10-2-95]
C/A2:94-1823-18
C/A5:94-1909-18

This action came on for jury trial before, Honorable United States Magistrate Judge, Robert S. Carr, presiding, and the issues having been duly tried and a decision having been duly rendered.

IT IS ORDER AND ADJUDGED that the plaintiff, Avaine Strong, take nothing and the action is hereby dismissed.

IT IS FURTHER ORDERED AND ADJUDGED that the defendants, State Board for Technical and Comprehensive Education, Denmark Technical, Frankie Keels recover of plaintiff their costs of action.

Larry W. Propes, Clerk of Court
Deputy Clerk
/s/ Margaret I. Passailaigue
Margaret I. Passailaigue

APPENDIX H

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA CHARLESTON DIVISION

AVAINE STRONG, Plaintiff, vs. STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION, et al. Defendants.	[filed May 10, 1995] CIVIL ACTION NO.: 2:94-1823-18AJ CIVIL ACTION NO.: 5:94-1909-6BC Addendum to Supplemental MOTION TO STRIKE

The following explanation with supporting documents is provided to further support Plaintiff's Motion to Strike, and Plaintiff's Supplemental to Motion to Strike, as it relates to violations of Rule 30(e) of the Federal Rules of Civil Procedure, and evidence taken under duress.

Late January or early February of 1995, Plaintiff received a letter from Ms Judith H. Hayes, court recorder, for deposition given on 10 January 1995. The nature of the letter was to convey that Plaintiff could obtain a copy of the 400 page document for $400. And also, for Plaintiff to arrange a time to review the document. Plaintiff subsequently, called Ms Hayes and arranged for a time and place to meet, and review the deposition. Ms Hayes

called at a later date, stating that, she is unsure about this arranged time. However, it was agreed that Plaintiff would meet with Ms Hayes at the public library in Columbia S.C., and the two would 'take it from there'; meaning that an alternate plan would ensue, if needed. After about one and one half hour, Ms Hayes departed for another appointment. Before Ms Hayes departed, Plaintiff requested that he be allowed to make a copy of the document, at the copier located in the library, and take this document with him for review and thus cutting cost. Ms Hayes stated that this would be improper, but she could and would send Plaintiff a condensed version of the deposition for review.

After weeks passed and Plaintiff had not heard from Ms Hayes, Plaintiff prepared a letter to Ms Hayes but received a telephone call from her before the letter was mailed (attached letter & Aff.). At this time, it was learned that Ms Hayes would not be forwarding the condensed version of the deposition as first promised, but instead Plaintiff needs to make a second trip to Columbia S.C., for reviewing purposes. Plaintiff agreed to meet at Ms Hayes' home. This was to happen on 25 February 1995. Plaintiff got directions and reconfirmed the appointment, before coming up, on the same day.

Shortly after arriving at Ms Hayes' home, Ms Hayes informed Plaintiff and Ms Paulette Mack (person accompanying Plaintiff) that she needed to leave some time between 4:30 PM and 5:00 PM. This did happen(Mack's Aff). Thus, approximately 4 hrs, in its entirety, was spent reviewing a document, which took some 10 hrs to develop. No in depth, through review was conducted by Plaintiff. Nor could Plaintiff fully note all necessary

changes needed. Plaintiff's signature was to stipulate to reviewing part of the deposition. The court should take note that the signature and thus the form is invalid due to an incorrect recording notarized date. Lastly, those changes, identified by Plaintiff, were never made(compare errata sheet page 242, line 9 with excerpts from deposition). This line is only one example. In any event, a through review by the Court would reveal no changes were made to any part of the document. Thus, another example of fraudulent material being submitted to this court.

The aforementioned circumstances, whether intentional or unintentional, clearly shows that Plaintiff was not given ample time for reviewing and making changes to the deposition; an obvious violation of Rule 30(e) of the Federal Rules of Civil Procedure. Furthermore, the situation surrounding the taking of the deposition as outlined in Plaintiff's Motion to Strike, amounts to evidence taken under duress. Reviewing the deposition can also be included in this category.

Plaintiff's Motion to Strike is appropriate when the attorney(s) for the Defendants are attempting to submit, evidence taken under duress, violations of Federal Rules of Civil Procedure or other fraudulent materials to the court. All of which are attempts to fraud the court into a decision that runs contrary to law.

Respectfully submitted

/s/ Avaine Strong
Avaine Strong
Plaintiff Pro Se
116 Park Place
Orangeburg, SC 29115
(803) 531- 2553

APPENDIX I

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 95-3111, CA-94-1823-2-18AJ,
CA-94-1909-5-18AJ [filed Dec 12, 1996]

Avaine Strong

Plaintiff-Appellant

v.

State Board For Technical And Comprehensive Education; Denmark Technical College Area Commission; Frankie Keels

Defendants-Appellees

and

State Of South Carolina Human Affairs Commission; Denmark Technical College

Denfendants [sic]

ORDER

Avaine Strong has filed an application for leave to proceed on appeal in forma pauperis.

The Court denies leave to proceed in forma pauperis.

For the court,

/s/ Patricia S. Connor
Patricia S. Connor
CLERK

APPENDIX J

UNITED STATES COURT OR [sic] APPEALS
FOR THE FOURTH CIRCUIT
1100 East Main Street, U.S. Court House Annex, Richmond, VA 23219

May 22, 1997

Avaine Strong
Howard University
Physics Department
Graduate School
Washington, DC 20059

Re: 95-3111 Strong v. State Board for Tech
CA-94-1823-2-18AJ, CA-94-1909-5-18AJ

Dear Mr. Strong

This acknowledges receipt of your letter dated May 14, 1997, which has been docketed as a motion for general relief asking for a Grand jury investigation.

Please note that the court has received your transcripts and your appeal is pending with the court. Once a decision is rendered on your appeal and motion, you will be promptly notified.

Your [sic] truly,

Patricia S. Connor
Clerk

By: /s/ J. P. Hall
J. P. Hall
Deputy Clerk

cc: Stephen Carrington Mitchell, Jonathan Pharr Pearson

IN THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

NO. 95-3111

May 14, 1997

The Honorable Bert M. Montague
Fourth Circuit Clerk
United States Courthouse
Annex, Room 501
Richmond, Virginia 23219

RE: Avaine Strong v. State Board for Technical and Comprehensive Education, South Carolina Human Affairs Commission, Denmark Technical College Area Commission, Denmark Technical College, and Frankie Keels

From the start the appellant has alleged allegation of conspiracy and discrimination perpetrated against him. Regretfully but not surprising, the transcripts of trial(volume I, II, & III received this month) have been altered. These transcripts are altered to the point that they no longer resemble most of the testimonies given at trial. It is mortifying to learn that a U. S. Federal Court is a party to Human Rights violations. At each stage I have proven my case, using the very hand dealt to me, from a stacked deck. From Denmark Technical College to South Carolina Human Affairs Commission(this agency also altered records and withheld evidence) to a mocked trial in a federal court with a predetermined verdict. Having been made aware that the transcripts would be more than enough to grant an appeal, the conspirators tempered with the transcripts.

In addition, I paid good money for a product which was not delivered. This has the definition of extortion: considering the size of money involved this should amount to a felony.

Those problem areas per appellant's brief, have now been changed in lower court's transcripts, either by insertions, omissions or deletions. In other words, these transcripts have been docketed, polished and embellished via hindsight. The evil doers were clever in their attempt to lay a foundation to account for the abrupt changes in questioning when appellant was conducting the examination. Transcripts of pre-trial yet to be delivered, probably will suffer the same fate. A comparison of my records with all materials filed or submitted to lower court is in order to ensure no contamination as well as completeness. For example, no verdict was rendered as it pertains to Denmark Technical(see attached).

As clever as they were(to include..court reporters, judge, lawyers, appellees and their witnesses), without becoming too revealing, loop-holes still exist. Furthermore, a trial with change of venue, will surely reveal the magnitude of these egregious acts. A bonafide investigation, I am confident, will lead to indictments for criminal acts conducted by a group of lawless thugs masquerading as caretakers of the law and justice. Furthermore, an investigation will expose the hand of the lead conspirator. A breach of trust by the government of South Carolina and its corrupt judicial system has been committed.

Never-the-less, I am requesting a Grand Jury investigation, in conjunction with the Federal Bureau of Investigation(FBI), to look into this criminal complaint, which also

includes jury tampering. As this case has evolved, the crimes have become more hideous and with newer participates [sic]. Therefore a larger container is needed to confine these corruptions, and a larger lid to keep it covered. A proclivity for a higher state of disorder.

Although formal complaints are being filed with the appropriate agencies, kindly advise me as to how I may proceed with the appeal. If nothing other than a delay, I hereby request such pending the outcome of the investigation. These people have dealt from the bottom of the deck one time too many.

Respectfully Submitted

/s/ Avaine Strong
Avaine Strong
Appellant Pro SE
District Court Charleston

APPENDIX K

Howard University
Dept. Of Physics and Astronomy
Washington, D.C., 20059

June 17, 1997

The Honorable Bert M. Montague
Clerk United States Court of Appeals [entered Jun 19, 1997]
For the Fourth Circuit
U.S. Court House Annex
1100 East Main Street
Richmond, VA 23219

RE: 95-3111 Strong vs State Board, et al civil action nos.: 2:94-1823-18AJ and 5:94-1909-18AJ

Dear Mr. Montague:

The following information, with attachments, are provided to assist in the "Motion for General Relief Asking for a Grand Jury Investigation", and appeal.

The appellant presented question to Frankie Keels surrounding dinner rolls. The term "dinner rolls" has now been changed in transcript, (hereafter called Bogus Transcripts, BT) to read as "red roses" (page 163). This is nonsense, other than a maneuver to later avoid perjury, if exposed (see Camp's affidavit). Mr. Salley has knowledge about his testimony being changed in addition to what is provided in affidavit.

Nevertheless, there still remain inconsistencies in BT. For instance: (1) did Keels keep leather coat or return it, (2) did appellant leave as time stated or shoot fire works? In BT, Boyd was still able to contaminate the sequestration process.

At trial Keels' phone records were used extensively to shoot holes in her story. Many questions were asked leading up to the January 10th date 188). Whereby, Keels denied ever being in Orangeburg or placing any phone calls.

Basically, BT contains wisdom from the judge advising appellant of his right and courtroom procedures. One can only assume that these are inserted to demonstrate fair play. However, in other parts the appellant is asking questions pertaining to the same matter. Obviously these were never explained to him.

The witnesses told lies at trial and different lies appear in BT. It is highly improbable that the offender will be able to discern which lie was told and at which time. I pray that this court will grant my motion which will expose the guilty. I have been the victim of extreme prejudice. How far will they go?

This correspondence is not meant to serve as a detail analysis of BT. Many issues herein are not addressed. For instance no attempt are being made to explain: (1) blocks of material moved from particular spots to more convenient locations, (2) intimidation of witnesses, and (3) exhibit not allowed as evidence.

Even though all involved know the allegations are true, they will dismiss these allegations through their arrogance as miscellaneous. A Grand Jury investigation is the

only way to make a conscious impact that laws have been broken.

Respectfully Submitted,

/s/ Avaine Strong

Avaine Strong,
Appellant Pro se

cc: Stephen Carrington Mitchell, Jonathan Pharr Pearson

AFFIDAVIT OF ROBERT EDWIN SALLEY

STATE OF SOUTH CAROLINA] [entered Jun 19 1997]
] ss
COUNTY OF Bamberg]

Comes now, Robert Edwin Salley, sui juris, and after being duly sworn, according to law, states that he is your affiant, that as your affiant he has first hand knowledge of the facts herein and believes these facts to be true to the best of his belief and knowledge. Your affiant is over the age of 21 and able to testify.

1. Never did the judge make the statement that if Mr Strong hadn't given witnesses, money to cover their expensive, then they(myself included) didn't have to attend trial; certainly not on day one.

2. The night (after 5:00 PM) Mr Strong took the witness stand, the jury was present when the attorneys for the defense read an affidavit stating that Mr strong had signed for reading a deposition, as well as questions about a clean copy of his phone records not being submitted before trial.

3. It is for these and other reasons(your affiant's testimony included) that I know for certain that the transcripts in question do not give a true story.

4. A couple of days after trial, your affiant had lunch with Mr. Albert Ulmer and another gentleman. Mr Uimer was bragging about how they (himself included) had beaten Mr Strong. Mr Ulmer said Mr strong should have taken the money offered him because now wait until he (Mr Strong) learns that he is going to have to pay court cost.

Further Affiant Sayeth Nought.

/s/ Robert Edwin Salley
Robert Edwin Salley

Sworn to and subscribed to by me on this the 5th day of June 1997,at Denmark SC, Jake N. Bookard Notary Public, State of South Carolina.

/s/ Jake N. Bookard
Jake N. Bookard

My commission expires 04-20-2002

AFFIDAVIT OF NORMAN C. CAMP

STATE OF North Carolina] [entered Jun 19, 1997]
] ss
COUNTY OF Wake]

Comes now, Norman C. Camp, sui juris, and after being duly sworn, according to law, states that he is your affiant, that as your affiant he has first hand knowledge of the facts herein and believes these facts to be true to

the best of his belief and knowledge. Your affiant is over the age of 21 and competent to testify.

The culinary arts instructor at Denmark Technical College prepared twenty-one (21) dinner rolls for Ms Frankie Keels' Thanksgiving dinner which the appellant in this case attended in November 1992. Your affiant and others saw these rolls.

Further Affiant Sayeth Nought.

/s/ Norman C. Camp
Norman C. Camp

Sworn to and subscribed to by me on this the 6 day of June 1997,Joy O. Dry, Notary Public, State of North Carolina.

/s/ Joy O. Dry
Joy O. Dry

My commission expires 4-4-98.

APPENDIX L

IN THE UNITED STATES COURT
OR [sic] APPEALS FOR THE FOURTH CIRCUIT

No. 95-3111 [FILED JUL 31 1997] July 30, 1997
RE: No. 95-3111 Avaine Strong V. State Board for Technical and Comprehensive Education, South Carolina Human Affairs Commission, Denmark technical College Area Commission, Denmark Technical College, and Frankie Keels

(CA-94-1823-2-18AJ, CA-94-1909-5-18AJ)

Pursuant Federal Rules of Appellate Procedure 40 and 35, I hereby request Petition For Rehearing and Suggestion For Rehearing In Banc, for reasons of material facts or law overlooked in the decision. Date of hearing: any day October 1997 or as the court deems.

DISCUSSION

All matters in appeal were brought to the attention of the district court and objected made accordingly. These include: attorneys obstructing justice by tampering with witnesses; defendants being uncooperative in providing discovery; pretrial motions not being heard; perjury and character of witnesses; hearsay evidence being submitted by defendants___ to include defendants' affidavit being read but not allowing Strong's affidavits to be read. Throughout, Strong has provided numerous examples to indicate prejudice. The example above spells prejudice as well as the latest episode of tampering with lower court transcript. Tampering of transcript should be interpreted as egregious acts, if not criminal. Which should not be considered disjoint from the appeal. For only with non-

contaminated material and void of any corruption can a true determination be reached. Furthermore Strong did not fail to authenticate cassette tape and thus should have been admitted.

Lastly, the court is reminded that pro se are held to less stringent standards than lawyers. See Haines v. Kerner (1972) 404 US SL, 30L Ed 2d 652,92s ct 594, 16FR Serv 2d 1 reh den 405 US 948,30L Ed 2d 819,92s ct 963. See also Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir 1985).

Respectfully Submitted

/s/ Avaine Strong
Avaine Strong
Appellant Pro se

SUPPLEMENTAL TO PETITION FOR REHEARING AND SUGGESTION FOR REHEARING IN BANC.
NO. 95 - 3111
(CA 94-1823-2-18AJ, CA 94-1909-5-18AJ)

Strong has always challenged the district court's decision of defendants' summary judgment and claims of conspiracy should have remained. South Carolina Human Affairs Commission(SHAC) should have remained as a defendant. It was proven that SHAC altered and withheld events in reaching its decision and thus denied Strong equal treatment under the law. Strong always questioned and challenged the attorneys' tactics of moving SHAC from state court to federal, consolidating cases and finally asking that SHAC be dismissed because SHAC can not be sued in federal court. All was objected to by Strong. Strong questioned the attorneys authority in this

improper maneuver [sic] since SHAC was not represented by these attorneys. Strong pressed for a summary judgment up til trial and other pre-trial motions. Strong never abandoned claims of improper procedures and unfair tactics and treatment, all in an effort to hide the truth. Existing evident should support all claims which goes to the heart of claims of corruptions and thus a miscarriage of justice if left uncorrected.

Respectfully Submitted

/s/ Avaine Strong 30 JUL 97
Avaine Strong

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT [filed Aug 13 1997]

No. 95-3111 August 1, 1997

Re: Avaine Strong v. State Board for Technical and Comprehensive Education, et al. (CA:94-1823-2-18AJ, CA:94-1909-5-18AJ)

DISCLAIMER TO PETITION FOR REHEARING
& SUGGESTIONS FOR REHEARING IN BANC

Matters discussed in petition is by no means complete. It only reflects those subject matters as they relate to the judgment by the court. Submission was mainly due to time constraints in that notice of judgment was not received until July 28, 1997.

I object to this decision which mainly parallels or mirrors that of the defendants' response to appellant's original brief. Listed below are some issues which were contained in appellant's original brief but did not receive a response from defendants or comments from this court:

No verdict rendered as it relates to Denmark Technical College

Judge rules Strong was entitled to $150,000 via defendants summary judgment but Strong was never given the opportunity to continue with the discussion which he tabled for a later date

Defendants were able to and did submit hearsay evidence

Unfair tactics used at trial to include witness sequestrations violations

No evidence to support defense that Strong scheme to set Keels up in order to regain position as dean and should not have been allowed

Perjury, that is making false statements under oath

As part of the courts opinions it is stated, "Strong failed to preserve those challenges by a timely objecting.." and the statement made, "We dispense with oral arguments because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisions process." Begging the courts pardon, but it is unclear how a determination like this can be made, when it is a fact that materials and evidence in this case have been altered and thus disputable. Furthermore Strong has requested docket listings and means of authenticating materials before this court.

From the beginning, perfunctory service is at best received by Strong. The lurid information previously submitted as well as those contained herein, still support prejudice; to include an unfair trial. Justice can be truly

served by a courageous court doing the right thing. A Grand Jury Investigation with the FBI is still a request in perhaps this precedent setting case.

Respectfully Submitted,

/s/ Avaine Strong
Avaine Strong

APPENDIX M

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 95-3111, CA-94-1823-2-18AJ,
CA-94-1909-5-18AJ [filed Aug 26,1997]

Avaine Strong

Plaintiff-Appellant

v.

State Board For Technical And Comprehensive Education; Denmark Technical College Area Commission; Frankie Keels

Defendants-Appellees

and

State Of South Carolina Human Affairs Commission; Denmark Technical College

Denfendants [sic]

On Petition for Rehearing with
Suggestion for Rehearing In Banc

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court
/s/ Patricia S. Connor
Patricia S. Connor
CLERK

APPENDIX N

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

AVAINE STRONG, Plaintiff, vs. STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION, et al. Defendants.	[filed Jul 18 1995] CIVIL ACTION NO.: 2:94-1823-18AJ CIVIL ACTION NO.: 5:94-1909-6BC

Come now Plaintiff, to hereby move this honorable court, pursuant to Fed. Civ. R. 56(a) and Fed. Civ. R. 60 to hear Plaintiff's Motion for Summary Judgment, filed with this court on March 2, 1995 and to restore the count of conspiracy held against all the defendants, to include South Carolina Human Affairs Commission(SHAC). Reasons for this motion will be enumerated in plaintiff's brief. Attached hereto and incorporated herein by reference is a brief in support of this motion, with a detailed prayer for specific relief request.

Respectfully Submitted,

/s/ Avaine Strong
Avaine Strong,
Plaintiff Pro Se
P.O. Box 639
Denmark SC
(803) 7933401/3351

APPENDIX O

AFFIDAVIT OF JOSEPHINE TOBIN

STATE OF SOUTH CAROLINA] [entered 8/7/94]
] ss
COUNTY OF BAMBERG]

Comes now, Josephine Tobin, sui juris, and after being duly sworn, according to law, states that she is your affiant, that as your affiant she has first hand knowledge of the facts herein and believes these facts to be true to the best of her belief and knowledge. Your affiant is over the age of 21 and competent to testify.

1. In early April 1992, your affiant and plaintiff attended a Faculty Senate Meeting to decide on Dr. Curtis Bryan's ability to manage Denmark Technical College Affairs.

2. Before the no-confidence voting took place, plaintiff was the sole person who spoke openly against the no-confidence voting at that time.

Further Affiant Sayeth Nought.

/s/ Josephine Tobin
Josephine Tobin

Sworn to and subscribed to by me on this the 29 day of July 1994,Bennie Belton , Notary Public, State of South Carolina.

/s/ Bennie Belton
Bennie Belton

My commission expires December 31, 1997.

AFFIDAVIT OF CURTIS E. BRYAN

STATE OF MARYLAND]
] SS
COUNTY OF PRINCE GEORGE] [entered mar 2 1995]

Comes now, Curtis E. Bryan, sui juris, and after being duly sworn, according to law, states that he is your affiant, that as your affiant he has first hand knowledge of the facts herein and believes these facts to be true to the best of his belief and knowledge. Your affiant is over the age of 21 and able to testify.

1. Your affiant is writing this affidavit in support of Mr. Avaine Strong.

2. Your affiant is aware of the complaint lodged against the defendants and concur whole heartily with those allegations which your affiant has first hand knowledge.

3. Your affiant is fully aware of plaintiff's work performance which was never a question. In fact plaintiff always met or exceeded his task.

4. Your affiant is also aware of the tactics which SBTCE are capable of using to discredit and defame an individual, and the mental distress and anguish brought about as a result of these enormities.

Further Affiant Sayeth Nought.

/s/ Curtis Bryan
Curtis E. Bryan

Sworn to and subscribed to by me on this the 23rd day of February 1995, at Camp Springs MD by James Adams JR Notary Public, state of Maryland.

/s/ James Adams JR
James Adams JR

AFFIDAVIT OF ISABELLE S. MAPLE

State of South Carolina]
] ss [filed July 14, 1994]
County of Bamberg]

Come now, Isabelle S. Maple, sui juris, and after first being duly sworn, according to law, states that she is your affiant, that as your affiant she has first hand knowledge of the facts herein and believes these facts to be true to the best of her belief and knowledge. Affiant is over 21 yrs of age and competent to testify:

1). Your affiant along with Frankie Keels, Sandra Young, Gray Haynes and Leonard Anderson were at the Southern Business Education Association's sixty-seventh Annual Convention in Savannah Georgia on October 22-24, 1992.

2). At lunch, Keels acknowledge to your affiant and others that she admired very much a person that worked with her and asked openly for strategies she could use to make this person notice her.

3). She stated that maybe she has been too hard in her attempts and may have scared him off.

Futher [sic] Affiant Sayeth Nought.

/s/ Isabelle S. Maple
Isabelle S. Maple

Sworn to and subscribed to by me on this, the 13th day of July 1994, at Denmark, South Carolina by Vasilisa Hamilton,notary public, state of S.C.

/s/ Vasilisa C. Hamilton
Vasilisa C. Hamilton

My commission expires 10-13-99

(seal)

AFFIDAVIT OF PATRICK L. FELDER

STATE OF SOUTH CAROLINA] [filed Apr 18 1995]
] ss
COUNTY OF BAMBERG]

Comes now, PATRICK L. FELDER, sui juris, and after being duly sworn, according to law, states that he is your affiant, that as your affiant he has first hand knowledge of the facts herein and believes these facts to be true to the best of his belief and knowledge. Your affiant is over the age of 21 and competent to testify.

1. Your affiant was present the Wednesday afternoon when Ms. Frankie Keels came to Mr Strong's classroom(plaintiff) and put to him a series of questions.

2. She started by saying she had an important matter to discuss with plaintiff the evening after the CHE meeting and he(plaintiff) couldn't be reached.

3. Everyone could see that Ms Keels was visibly upset, as she went back and forth to Mrs. Rentz's office and returned with new questions each time.

4. Plaintiff was polite and non-argumentative.

5. As Ms. Keels made her final departure, plaintiff asked Ms. Keels, what was the important matter? She said she wanted to ask something about the Electro-mechical [sic] program but it has been taken care of.

6. Some students commented to plaintiff how well he conducted himself during the ordeal.

* Further Affiant Sayeth Nought.

/s/ Patrick L. Felder
Patrick L. Felder

Sworn to and subscribed to by me on this the 7th day of April 1995,Arlee Bookard ,notary Public, State of South Carolina.

/s/ Arlee D. Bookard
Arlee D. Bookard

My commission expires June 1997.

AFFIDAVIT OF JUNE B. YOUMANS

STATE OF SOUTH CAROLINA]
] ss
COUNTY OF BAMBERG] [entered Mar 2 1995]

Comes now, June B. Youmans, sui juris, and after being duly sworn, according to law, states that she is your affiant, that as your affiant he has first hand knowledge of the facts herein and believes these facts to be true

to the best of her belief and knowledge. Your affiant is over the age of 21 and able to testify.

1. When Ms Frankie Keels came to Denmark Technical College, Plaintiff was Dean of the Industrial and Related Technologies Division and affiant his secretary. Form [sic] the time of Ms. Keels arrival at the college she found constant fault with everything Plaintiff did. There were many memorandums, phone calls, and visits to her office. After a short while Ms. Keels demoted Plaintiff and replaced him with a woman, Mrs. Joyce Rentz. Mrs. Rentz had no previous experience in the Technical and Engineering area and did not have the background or education for the job, she was also a close comrade of Ms. Keels. Plaintiff was doing a great job of running the department before Ms. Keels arrived at DTC. Things went downhill after Plaintiff left the position of Dean and worked only as an instructor.

Later Ms. Keels and Plaintiff became friends and started dating. This was kept hush-hush because of her position as Interim Vice President of Academic Affairs. Plaintiff confided just about everything to me. We were good friends as well as boss and secretary. Affidant [sic] herd [sic] Plaintiff's side of many conversations with Ms. Keels and also read some correspondence. Plaintiff confided in me that Ms. Keels was getting to serious and Plaintiff needed more time to see what his feelings were. When Plaintiff attempted to slow things down, Plaintiff did not succeed. As a result, Plaintiff finally broke the affair off altogether. After that Ms. Keels really had it in for Plaintiff. She kept a constant check on him and made his job and time spent at DTC a very unpleasant affair. This was a complete turnaround from the dating period

when Plaintiff was encouraged to do anything and everything Plaintiff wanted to.

Further Affiant Sayeth Nought.

/s/ June B. Youmans
June B. Youmans

Sworn to and subscribed to by me on ths [sic] the 25th day of March 1994, at Denmark, SC by Vasilisa Hamilton, Notary Public, State of South Carolina.

/s/ Vasilisa C. Hamilton
Vasilisa C. Hamilton

My commission expires 10-13-99

AFFIDAVIT OF GARY E. HAYNES

STATE OF SOUTH CROLINA]
] ss
COUNTY OF BAMBERG] [filed 30 NOV 95]

Comes now, GARY E. HAYNES, sui juris, and after first being duly sworn, according to law, states that he is your affiant, that as your affiant he has first hand knowledge of the facts herein and believes these facts to be true to the best of his belief and knowledge. Your affiant is over the age of 21 and competent to testify.

The testimony that Isabelle S. Maple gave on October 31, 1995 is exactly correct as it relates to Frankis [sic] Keels talking with four Denmark Technical College employees (Isabelle Maple, Sandra Young, Leonard Anderson, Gary Haynes). This conversation centered around Ms Keels wanting to get this new person, she recently met, to notice her.

Further Affiant Sayeth Nought.

/s/ Gary E. Haynes
Gary E. Haynes

Sworn to and subscribed to by me on this the 9th day of November 1994, at Denmark, SC by Arlee Bookard, Notary Public, State of South Carolina.

/s/ Arlee D. Bookard
Arlee D. Bookard

My commission expires June 1997.

FILED
DEC 23 1997
CLERK

(2)

No. 97-864

In The

Supreme Court of the United States

October Term, 1997

AVAINE STRONG,

Petitioner,

v.

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION; Denmark Technical College Area Commission; Frankie Keels, and State of South Carolina Human Affairs Commission; Denmark Technical College,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF OF REPONDENTS IN OPPOSTION

MASON G. ALEXANDER, Esquire
Counsel of Record
JONATHAN P. PEARSON, Esquire
STEPHEN C. MITCHELL, Esquire
ELLZEY & BROOKS, LLC
1901 Main Street, Suite 1400
NationsBank Plaza
Post Office Box 11612
Columbia, South Carolina 29211
(803) 255-0000

Attomeys for Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

18 pp

QUESTIONS PRESENTED FOR REVIEW

I. SHOULD THIS COURT EXERCISE CERTIORARI JURISDICTION TO REVIEW ISSUES PRESENTED BY THE PETITIONER WHERE HE HAS FAILED TO ALLEGE APPROPRIATE BASES FOR THIS COURT'S EXERCISE OF DISCRETIONARY REVIEW UNDER SUPREME COURT RULE 10?

II. SHOULD THIS COURT EXERCISE CERTIORARI JURISDICTION TO DETERMINE ISSUES WHICH WERE NOT PROPERLY PRESERVED FOR APPEAL?

III. SHOULD THIS COURT EXERCISE CERTIORARI JURISDICTION TO INTERPRET SOUTH CAROLINA CONSPIRACY LAW WHERE THE FOURTH CIRCUIT CORRECTLY INTERPRETED SUCH LAW?

IV. SHOULD THIS COURT GRANT CERTIORARI TO REVIEW THE REFUSAL OF THE FOURTH CIRCUIT TO ORDER A GRAND JURY INVESTIGATION WHERE SUCH ACTION IS BEYOND THE JURISDICTION OF THE UNITED STATES COURTS OF APPEAL?

V. SHOULD THIS COURT GRANT CERTIORARI TO DECIDE ISSUES WHICH WERE NOT THE BASIS FOR THE DECISION BELOW?

VI. SHOULD THIS COURT GRANT CERTIORARI TO DETERMINE IF REMOVAL WAS PROPER WHERE THE CASE HAS BEEN FULLY LITIGATED ON THE MERITS AND APPEALED TO THE FOURTH CIRCUIT?

QUESTIONS PRESENTED FOR REVIEW – Continued

VII. SHOULD THIS COURT GRANT CERTIORARI WHERE THE FOURTH CIRCUIT PROPERLY DENIED PETITIONER'S REQUEST FOR REHEARING WITH SUGGESTION FOR REHEARING IN BANC?

VIII. SHOULD THIS COURT GRANT CERTIORARI TO REVIEW THE FORM AND CONTENT OF THE FOURTH CIRCUIT'S DISPOSITION OF THIS CASE IN AN UNPUBLISHED PER CURIAM OPINION?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF AUTHORITIES v

STATEMENT OF THE CASE 1

REASONS FOR DENYING CERTIORARI 3

I. Petitioner Has Failed To Allege Appropriate Bases For This Court's Exercise of Discretionary Review 3

II. Issues Submitted to This Court by Petitioner Were Not Properly Preserved for Appeal in the Lower Courts 4

III. The Fourth Circuit Correctly Interpreted South Carolina Conspiracy Law on Petitioner's Appeal of the Grant of Summary Judgment in Favor of Respondents 5

IV. Petitioner's Suggestion That This Court Review the Fourth Circuit's Denial of His Request for a Grand Jury Investigation Is Not Properly Before This Court 6

V. Petitioner Improperly Raises Questions in His Petition for Certiorari Which Were Not Decided Below 6

VI. Petitioner's Challenge That Removal was Improper is not Appropriate for Review on Certiorari 8

VII. The Fourth Circuit Properly Denied Petitioner's Petition for Rehearing With Suggestion for Rehearing In Banc 9

TABLE OF CONTENTS – Continued

Page

VIII. Certiorari is Not Proper to Address Petitioner's Objection to the Form and Content of the Fourth Circuit's Unpublished Per Curiam Opinion..... 10

CONCLUSION 11

TABLE OF AUTHORITIES

Page

CASES

Adickes v. S. H. Kress & Co., 398 U.S. 144 (1970)....6, 7

Braxton v. United States, 500 U.S. 344 (1991)..... 3

City of Springfield, Mass. v. Kibbe, 480 U.S. 257, *reh'g denied*, 481 U.S. 1033 (1987)..... 5

Grubbs v. General Elec. Credit Corp., 405 U.S. 699 (1972)..... 8

Hartford Accident & Indem. Co. v. Costa Lines Cargo Servs., Inc., 903 F.2d 352 (5th Cir. 1990)..... 8

Helms v. United States, 340 F.2d 15 (5th Cir. 1964), *cert. denied*, 382 U.S. 814 (1965)..... 10

Holly Farms Corp. v. NLRB, 517 U.S. 392 (1996)..... 6

Magnum Import Co. v. Coty, 262 U.S. 159 (1923)..... 4

Matsushita Elec. Indus. Co. v. Epstein, 516 U.S. 367 (1996)..... 6

NLRB v. Brown & Root, Inc., 206 F.2d 73 (8th Cir. 1953)..... 9

Strong v. State Board for Tech. & Comp. Educ., 117 F.3d 1414 (4th Cir. 1997)..... 10

Todd v. South Carolina Farm Mut. Ins. Co., 278 S.E.2d 607 (S.C. 1981)..... 5

United States v. Johnston, 268 U.S. 220 (1925)..... 4

United States v. Lynch, 690 F.2d 213 (D.C. Cir. 1982).... 10

TABLE OF AUTHORITIES – Continued

Page

RULES AND STATUTES

Fed. R. of App. P. 35 9
Fed. R. of Civ. P. 50 5
Fed. R. of Civ. P. 51 5
Fed. R. of Evid. 103 5
28 U.S.C. § 1291 (1994) 6
28 U.S.C. § 1292 (1994) 6
28 U.S.C. § 1331 (1994) 8
28 U.S.C. § 1441 (1994) 8
28 U.S.C. § 2111 (1994) 10
S.C. Code Ann. § 1-13-10 *et seq.* 1

STATEMENT OF THE CASE

Petitioner, a former professor and administrator at Denmark Technical College (hereinafter "DTC"), originally brought this action, *pro se*, against the above Respondents after voluntarily resigning his position on July 29, 1993. On September 14, 1992, almost a year before his resignation, Appellant was removed from his position as Dean of Engineering and Industrial Technology for poor job performance. He remained at DTC as a full-time faculty member. On April 14, 1993, Petitioner filed a charge of discrimination with the South Carolina Human Affairs Commission (hereinafter "SHAC")[1], which ultimately issued a determination of "no reasonable cause." Petitioner then sued for slander, violation of civil rights, sexual harassment (Title VII), defamation, intentional infliction of emotional distress, unfair and deceptive business practices, and conspiracy.

On November 7, 1994, Respondents filed a Motion to Dismiss SHAC from this case, based on the doctrine of sovereign immunity. During a hearing on the Motion in December, 1994, Appellant agreed to withdraw his Complaint against SHAC. Petitioner later forwarded a letter to the court explaining that he had changed his position and wished to seek a declaratory judgment against SHAC. Respondents' counsel forwarded a letter to the court on January 6, 1995, requesting that Appellant be required to amend his Complaint to seek a declaratory judgment. On

---

[1] The South Carolina General Assembly created the South Carolina Human Affairs Commission to investigate claims of discrimination in South Carolina, a deferral state. *See* S.C. Code Ann. § 1-13-10 *et seq.*

January 10, 1995, Petitioner forwarded another letter to the court agreeing to amend his Complaint. Petitioner, however, never properly amended his Complaint.

On March 15, 1995, Respondents moved for summary judgment. The trial judge granted Respondents' Motion with respect to all Respondents on the claims of slander, violation of civil rights, defamation, intentional infliction of emotional distress, unfair and deceptive business practices, and conspiracy. The Motion was denied only with respect to Petitioner's claim of sexual harassment. This case was tried before a jury from October 30 through November 1, 1995, with United States Magistrate Judge Robert Carr presiding. During this trial, Petitioner called at least seven witnesses. Moreover, he cross-examined Respondents' witnesses at length. After deliberation, the jury rendered a verdict for Respondents.

On November 30, 1995, Petitioner filed a Notice of Appeal in the United States District Court for the District of South Carolina. The appeal was held in the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit affirmed the District Court's decision without hearing oral arguments by an unpublished *per curiam* opinion on July 21, 1997. The Fourth Circuit affirmed the grant of summary judgment against the Petitioner on his conspiracy claim and held that all other issues raised on appeal were either inappropriate for appellate review or were not properly preserved for appeal. On July 31, 1997, Petitioner filed a Petition for Rehearing with Suggestion for Rehearing in banc. The Petition was denied on August 26, 1997.

REASONS FOR DENYING CERTIORARI

I. Petitioner Has Failed To Allege Appropriate Bases For This Court's Exercise of Discretionary Review

Petitioner presents factual issues which are inappropriate for certiorari to the Supreme Court of the United States. Supreme Court Rule 10 provides guidance for determining what questions are appropriate for certiorari. Relevant portions of the Rule describe situations in which this Court may grant certiorari:

> (a) United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power; . . .
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decide an important federal question in a way that conflicts with relevant decisions of this Court.

Sup. Ct. R. 10. None of the twenty-five questions Petitioner presents for review even remotely fall within the guidelines for granting certiorari as set forth in Rule 10. Furthermore, none of Petitioner's questions presented raise the issue of an interpretation of federal law. *See Braxton v. United States*, 500 U.S. 344 (1991) (holding that the principal purpose of certiorari jurisdiction is to

resolve conflicts among Circuit Courts of Appeals and state courts concerning interpretation of federal law). Instead, all of the issues presented for review to this Court are factual and evidentiary objections which either were not addressed in the proceedings below or were not properly preserved for appeal.

Petitioner has raised myriad factual and procedural issues before this Court which are not appropriate for certiorari. Petitioner mistakenly treats this Court's review as an appeal of right. As recognized by the late Chief Justice Taft, certiorari "was not conferred upon this Court merely to give the defeated party in the Circuit Court of Appeals another hearing." *Magnum Import Co. v. Coty*, 262 U.S. 159, 163 (1923). Certiorari is not to be granted to "review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925). Many of the questions presented by the Petitioner concern evidentiary and factual objections which either were not raised before the Fourth Circuit or were not properly preserved below.

While it is Respondents' position that none of the twenty-five questions presented by the Petitioner for review qualify for certiorari review under Supreme Court Rule 10, Respondents will briefly address the appealability of those issues.

II. Issues Submitted to This Court by Petitioner Were Not Properly Preserved for Appeal in the Lower Courts

Petitioner now seeks review of questions the Fourth Circuit declined to review, because the Petitioner had

failed to properly preserve the issues for appeal. Ordinarily, this Court will not decide questions which were not raised or litigated below. *City of Springfield, Mass. v. Kibbe,* 480 U.S. 257, *reh'g denied,* 481 U.S. 1033 (1987). Specifically, the Petitioner challenges the making of inappropriate statements in the presence of the jury, the exclusion of Petitioner's hearsay evidence by the trial judge, the treatment of the Petitioner as a *pro se* litigant by the trial judge, the trial judge's denial of *voir dire* questions regarding race and religion, the trial judge not instructing all defendants to sit at defendant's table during trial, the use of a particular defense by the Respondents, and the district court's denial of Petitioner's equal protection rights. Appellant has failed to properly preserve these issues as required by the Federal Rules of Evidence and the Federal Rules of Civil Procedure. *See, e.g.,* Fed. R. Evid. 103; Fed. R. Civ. P. 50 and 51. Because Petitioner failed to object to any of these issues at trial, the Fourth Circuit properly refused to revisit them on appeal. Therefore, for the same reasons this Court should also decline certiorari to review them.

III. The Fourth Circuit Correctly Interpreted South Carolina Conspiracy Law on Petitioner's Appeal of the Grant of Summary Judgment in Favor of Respondents

Addressing Petitioner's conspiracy claim on the merits, the Fourth Circuit correctly interpreted South Carolina law in holding that the summary judgment was proper. *See Todd v. South Carolina Farm Mutual Ins. Co.,* 278 S.E.2d 607 (S.C. 1981) (holding that where conspiracy allegations merely restate acts encompassed in other

claims, the conspiracy claim fails as a matter of law). Therefore, this Court should decline certiorari on this issue.

IV. Petitioner's Suggestion That This Court Review the Fourth Circuit's Denial of His Request for a Grand Jury Investigation Is Not Properly Before This Court

Petitioner's request for this Court to review the Fourth Circuit's denial of his request for a Grand Jury investigation of SHAC's handling of his claims of discrimination is not properly before this Court. Such action is beyond the jurisdiction of the federal circuit courts of appeal. The jurisdiction of the Fourth Circuit is limited to review of final decisions and interlocutory orders of district courts. 28 U.S.C. §§ 1291 & 1292. It does not extend to ordering Grand Jury investigations. *Id.* Because the Fourth Circuit did not err in denying Petitioner's request for a Grand Jury investigation, this Court should decline certiorari to hear the issue.

V. Petitioner Improperly Raises Questions in His Petition for Certiorari Which Were Not Decided Below

Petitioner has raised several new issues in his Petition for Certiorari which are not properly before this Court. This Court "generally do[es] not address arguments that were not the basis for the decision below." *Holly Farms Corp. v. NLRB*, 517 U.S. 392, n.7 (1996) (quoting *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, n.5 (1996)); *Adickes v. S. H. Kress & Co.*, 398 U.S. 144 (1970)

(failing to raise issue of denial of request to amend complaint before the court of appeals precluded consideration of the issue upon petition for certiorari).

Petitioner presents numerous issues to this Court which were not brought before the Fourth Circuit. They include: (1) whether SHAC violated "federal laws in reaching its decision of 'no reasonable cause;' " (2) whether Petitioner was provided equal protection during SHAC's investigation; (3) whether the district court erred in dismissing Petitioner's due process and freedom of speech claim; (4) whether the district court erred in not allowing Petitioner to amend his complaint; (5) whether Petitioner as a *pro se* litigant was held to the same standards as lawyers; (6) whether Petitioner's claims of sexual harassment were given equal weight as claims by his female counterparts; (7) whether the trial judge erred when choosing not to intervene in settlement; (8) whether the district court violated Petitioner's equal protection rights; (9) whether the trial judge erred by not allowing questions regarding race and religion to be included in the *voir dire* questions for the jury; (10) whether the trial judge erred by not instructing Respondents to sit at their table during trial; (11) whether sequestration of witnesses provided the Respondents with an unfair advantage at trial; and (12) whether the trial judge erred when he allowed Respondent to offer a particular defense.

Petitioner should have been aware of these issues before appeal; however, he failed to raise any of these issues before the Fourth Circuit. As none of these issues were addressed below, this Court should decline certiorari to review these issues. *See Adickes v. S. H. Kress & Co.*, 398 U.S. 144 (1970).

VI. Petitioner's Challenge That Removal was Improper is not Appropriate for Review on Certiorari

Petitioner also challenges removal of the case to the district court. However, removal was proper in this case because the action was brought under Title VII of the Civil Rights Act of 1964 and could have been brought under the district court's original jurisdiction pursuant to 28 U.S.C. § 1331. Therefore, the case was properly removed pursuant to 28 U.S.C. § 1441. Because removal was proper in this case, the issue is not appropriate for certiorari review.

Even if removal had been improper, Petitioner has waived his objection to federal court jurisdiction by permitting the case to be tried on the merits in federal district court and appealing to the Fourth Circuit. *See Hartford Accident & Indem. Co. v. Costa Lines Cargo Servs., Inc.*, 903 F.2d 352 (5th Cir. 1990) (applying factors outlined in *Grubbs v. General Elec. Credit Corp.*, 405 U.S. 699 (1972), to hold that, where removal was improper and summary judgment was granted, remand was precluded because the case had been determined on the merits). The Fifth Circuit further noted that the *Grubbs* rule spawns from "concerns for judicial economy and from a desire to prevent a party that bided its time before raising a defect in removal jurisdiction from getting a second bite at the apple." *Id.* at 359. Removal of this case was proper, and even if it were not, remanding the case to state court would be improvident. At this stage, remand would contravene the noted concern for judicial economy enunciated in *Grubbs*.

VII. The Fourth Circuit Properly Denied Petitioner's Petition for Rehearing With Suggestion for Rehearing In Banc

Petitioner also petitions this Court to review the denial of his Petition for Rehearing with Suggestion for Rehearing In Banc by the Fourth Circuit. The purpose of a petition for rehearing is to direct the court's attention to some material matter of law or fact which it overlooked when deciding a case which, had it been given consideration, would probably have brought about a different result. *NLRB v. Brown & Root, Inc.*, 206 F.2d 73 (8th Cir. 1953). In his Petition for Rehearing with Suggestion for Rehearing In Banc, Petitioner raised many of the same issues presented in his Petition for Certiorari to this Court. Specifically, Petitioner challenged the Fourth Circuit's determination that those issues were not properly preserved for appeal. The Fourth Circuit correctly denied rehearing on the basis that Petitioner had failed to properly preserve those issues for appeal in the trial court.

The Fourth Circuit's denial of Petitioner's request for rehearing in banc was proper. Federal Rules of Appellate Procedure Rule 35 provides:

> [rehearing in banc] is not favored and ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.

Fed. R. App. P. 35. Petitioner has failed to allege that his case falls under the requirements of the Rule 35. Instead of presenting a question of "exceptional importance," Petitioner presented to the Fourth Circuit factual and

procedural issues of only trivial importance. Although Petitioner proceeded *pro se* at trial, he is intelligent and well educated. He has advanced degrees in Physics and Mathematics. As demonstrated by his numerous motions and memoranda, he was aware of many of the procedural requirements of the Federal Rules. In banc considerations are appropriate in extremely unusual cases where necessary to cure a gross injustice. *United States v. Lynch*, 690 F.2d 213 (D.C. Cir. 1982). The Fourth Circuit properly declined in banc review because no such "gross injustice" existed in its decision. Therefore, this Court should deny certiorari to review the decision of the Fourth Circuit to decline the Petition for Rehearing with Suggestion for Rehearing In Banc.

VIII. Certiorari is Not Proper to Address Petitioner's Objection to the Form and Content of the Fourth Circuit's Unpublished Per Curiam Opinion

Certiorari is not proper to review Petitioner's allegation that the Fourth Circuit erred by providing an opinion only on those issues briefed by the Respondents. The Fourth Circuit issued an unpublished *per curiam* opinion on July 21, 1997. The court held that all of Petitioner's issues for appeal "fail[ed] to clarify how [Petitioner] was prejudiced" and that those issues were not properly preserved for appeal. *Strong v. State Board for Tech. & Comp. Educ.*, 117 F.3d 1414, *1414 (4th Cir. 1997) (unpublished *per curiam* opinion). The standard of review on a writ of certiorari is harmless error. 28 U.S.C. § 2111. Harmless error is that which does not affect substantial rights. *Helms v. United States*, 340 F.2d 15 (5th Cir. 1964), *cert. denied*, 382 U.S. 814 (1965). Because Petitioner has failed

to demonstrate that he was substantially prejudiced by the alleged failure of the Fourth Circuit to individually address each issue at length which was raised in his appellate brief, this Court should deny certiorari.

CONCLUSION

Because Petitioner has failed to allege issues which are proper for certiorari by this Court, Respondents request this Court deny Petitioner's request for certiorari.

Respectfully Submitted,

MASON G. ALEXANDER
Counsel of Record
JONATHAN P. PEARSON
STEPHEN C. MITCHELL
ELLZEY & BROOKS LLC
Post Office Box 11612
Columbia, South Carolina 29211
(803) 255-0000
Attorneys for Respondents